(28,853)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1922.

No. 341.

CURTIS, COLLINS & HOLBROOK COMPANY, APPELLANT,

vs.

THE UNITED STATES OF AMERICA.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

VOLUME II.

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(Testimony of George E. Tuman.)

Q. At what time would you pay him the $25?

A. I could not tell now.

Q. Would you pay him before the land was turned over? A. No.

Q. You would not pay him?

A. I don't think so; no. I am pretty sure not.

Q. Was Mr. Remick to charge the people anything for locating them on the land?

A. Well, I considered the $25 a charge against the people who sold the land, yes.

Q. Under the agreement that and Mr. Remick would make, you could not charge the people that, could you? [295]

A. My understanding with Mr. Remick, as I recall it, was that I would protect him and see that he would get the $25 a claim out of the sale of the land. We did not go into the method of accomplishing that. This plat that I showed to Mr. Remick not only showed what I consider to be good timber land that was subject to entry. The plat I would show him would only have one mark on it, which would be "good vacant timber land." From time to time I would advance Mr. Remick money for expenses. I do not remember arranging to pay their bills anywhere. I may have advanced money to Remick or perhaps others from time to time.

Q. That is you advanced money to Remick and he would expend it in taking the people out and showing them the land, and then also in taking

(Testimony of George E. Tuman.)

them up to Susanville and their expenses on that trip?

A. I advanced money to Remick from time to time; I cannot recall now how he used it, nor for what purpose. I would have an accounting with Mr. Remick as to how he expended the money. He would explain to me how he had expended this money on account of this person or that person. I have no clear recollection of any details and in saying probably it is a good deal what must have occurred in reference to the way in which he expended the money. I would not hand Mr. Remick $100 to go out there and work without knowing something of what he was doing with the $100. The money would be used in some way in connection with the taking up of the timber land.

At the afternoon session the witness stated the following in answer to question by the master: "The scrip that I spoke about this morning was laid some time during the winter of 1901 and 2. I do not know when the patents came out. They came along, I think, at different [296] times since then. I do not know whether they are all in as yet or not. Before the patents were issued the lands would be transferred to the buyer of the scrip. I was not familiar with the details as to the handling of the base land and the transferring to the purchaser of the same and to the Government and the details in connection with getting the land by the use of scrip, but to the best of my recollection, I think it was assembled in the name of

(Testimony of George E. Tuman.)

G. Howard Thompson of the Bank of California.

Q. You said that people up there in that community generally knew that a great deal of land had been scripped. How would they know that you had anything to do with it?

A. I think very likely that we told people that we were scripping land. While I tried to keep the earlier operations in there as quiet as I could, for business reasons, it soon became generally known everywhere that I was operating in timber there, cruising land and placing scrip on it. I do not think that we obtained any patents during the years 1901–02 that were scrip. I think that was too soon for them to be issued, but some of it I think in a year or two after the location of the scrip. But I know a year or so ago there was some of them that had not been patented yet. That is all I can tell about it. I am inclined to think there would be something in the record of Plumas County as early as 1902 to show that the Curtis, Collins & Holbrook Co. had interest in the land I think that the practice is of nearly all the land office officials that after an entry, and in the case of timber and stone entries, when final proof is made, and in the location of forest reserve scrip in the land office, they communicate to the local offices of the county that fact in which the land is situated. I think the records of Plumas County show almost very shortly after the location of the scrip that the [297] land was in the name of G. Howard Thompson. Consequently it would ap-

(Testimony of George E. Tuman.)

pear in the county records first to G. Howard Thompson and later when transferred to the company I presume would show there in the name of the company. Mr. Golden and I ceased cruising the timber land together on Aug. 1, 1901. Up to that time we had cruised and accepted as good timber land, probably 30 or 35,000 acres. The rest of the timber that the Curtis, Collins & Holbrook Co. acquired I cruised myself personally. For the later work I hired assistants, one A. W. Elam. He was a compassman and I paid him $3.00 a day and his expenses. We cruised most of October and November of that year, also a little in September and most of the following year, 1902. During that time I cruised probably forty to forty-five thousand acres that were afterwards purchased and acquired. It would be the difference between what Golden and I cruised and what the company now owns. In response to a question as to what arrangement Mr. Tuman made with Mr. Remick, he stated, "Mr. Remick informed me that he knew that there were people who were anxious to take up timber claims, and I in turn showed him, gave him in fact township plats which had marked on them land which I considered good. I don't know as anything much was said than what would just accomplish this."

Q. What did you say to him about the expense of taking up the land?

A. The expense?

Q. Yes. Let me ask you, what did you do in re-

(Testimony of George E. Tuman.)

gard to the expense in the various cases?

A. Well, of course, we did not contemplate, probably, to pay all the expenses, or advance them or something like that, but it is quite probable, I think I did in fact advance Remick money from time to time.

Q. And you understood when you advanced him the [298] money, that the money was to pay the expenses of the entrymen to go and look at the land and to go to the Land Office to make their proof, did you not?

A. I don't know as I understood it was to be used, just what it was to be used for; he required money for financing, handling these claims, in the way of loans; we considered it always on the basis of a loan, no matter what he had advanced or for what purpose, and I trusted to Mr. Remick the disposition of it.

Q. What expense could there have been besides the expense of taking the entrymen to look at the land and taking them to Susanville to file on the land,—what other expense could there have been at that time, to advance him the money for?

A. Well, I suppose that is what the money was used for, if he used the money that I gave him for the purpose of paying the expenses of taking a party of men to Susanville, why he did it, I don't know.

Q. That is the basis on which he accounted to you for the funds that you gave him, isn't it?

A. Ultimately, probably.

(Testimony of George E. Tuman.)

Q. And then when it came to make the final proof, how would you advance the money—would you give him the money to give to them or would you advance it to them yourself?

A. I might have done it in some cases or I might not; I don't remember. I do not suppose I would remember now any specific case where I would loan money to entrymen direct or whether I first gave it to Remick and he loaned it to them. I am inclined to think that as to the money the Aid people made their final proof with I either gave the money to John Aid—no, I don't know whether I gave it to John Aid or whether I gave it to the individual members of the party. I don't remember. [299]

Q. Well, now the entrymen, some of these entrymen, have testified that they received money at the Emerson Hotel in Susanville.

A. Probably. I know the name Elijah Taylor and that is about all. I cannot say whether I had ever met John Lewis Gray personally or not. I met Robert C. Taylor once I know. I had met the old man Aid about the time they made their proof. I don't know where I met him. I do not remember the time when I bought the land from him. I do not remember seeing Jacob S. Aid, the old man, at the Park Hotel in Chico, nor John Aid nor his two brothers. I do not remember the circumstances at all under which the deeds to their property were handed to me. I do not know whether the deeds were ever handed to me or not.

Q. Now, were you particularly desirous of hav-

(Testimony of George E. Tuman.)

ing people locate upon these particular pieces of land? (NOTE: This question referred to lands in Township 27 N, R. 8 E, and Township 27 N, R. 9 E, which were not acquired by the Curtis, Collins and Holbrook Company or any one interested in the Company.)

A. I did not object to their locating on them. I told Mr. Heppe and Mr. Forsen that the land was good timber land. I told Mr. Heppe that I might arrange to loan him money to make his proof. I may have told him that I could arrange to give him money or loan him money to pay his expenses in making the entry. I don't remember distinctly. I don't know that I loaned him money to make the entry. I don't remember. I cannot say now definitely whether I gave him any expense money to cover the expenses of his party in going out to look at the land. I did not go out with them to look at the land. I think A. E. Head went out with them. I don' think I gave Mr. Head any [300] money at that time to cover the expenses of these people, at least not to my knowledge. I don't remember now of ever telling Mr. Head that I would advance him any money or advance any money to these people to make their, [301] proof and to cover their expenses.

Q. You stated in your testimony this morning that you gave Mr. Heppe a description of the land that you wanted people to take up; that is, of good timber land, gave him descriptions of good timber

(Testimony of George E. Tuman.)

land, which would be desirable for people to locate on; is that correct?

A. I did not mean that I wanted them to locate on the land, but I gave them the Plat with the statement that these lands I had marked were good timber lands. I think I gave Heppe the locations and descriptions of good timber lands within one or two days after he had made final proof. My recollection now is that it was after final proof, so that it would be 60 days after Heppe saw his land before he began taking people out to show them land to locate upon.

Q. What conversation did you have with Heppe at that time?

A. At the time that I showed him the plat of the other lands?

Q. Yes.

A. I think that is all there was to the conversation.

Q. Didn't you tell Heppe that he could assure the people that you would get the money for them or provide to loan the money with which to take up the land, and cover the expenses?

A. Heppe had just borrowed from me money for his own land, and I presume that he assumed, and I probably let him assume the fact, that I loaned money to other people also. He informed me that he had a great many friends who would like to take up land. I think I told Heppe that the land ought to be worth to the people when they had got title to it, at least $100 [302] a claim, the cost of the

(Testimony of George E. Tuman.)

land, that is the $400 plus the expense of locating the land and, Heppe's fee would amount to over $500 and $100 would be $100 profit per claim. I probably told Heppe that I thought he ought, if he located people, to get reputable people, that is, people of some little standing in the community. I might have had occasional conversations with the people that were located by Heppe and Remick, but, as a rule, I did not know them only by name. I do not think I had any conversation with any locators, either those located by Heppe or by any of the others in reference as to whether or not there would be a purchaser for their land or a market for their land.

Q. Going back to the land that John Aid took up and his party, it has been shown in evidence here that under his direction or supervision or guidance there were 10 entries taken up, and that all the money for these various entries was advanced by you and further that none of these people had any property or were financially responsible, and Mr. Aid was a common teamster up there, driving teams. Will you explain how you loaned $4,000 to those people without interviewing any of them but Mr. John W. Aid, who was a teamster, and had no financial responsibility?

A. Well, they each became the owner of a piece of land.

Q. That is, they might become the owner of a piece of land. How did you know whether they would ever become the owner? How did you know John

(Testimony of George E. Tuman.)

W. Aid was not just giving you a story when he told you he had ten people that would like to locate on timber lands?

A. I took that much chance on John Aid.

Q. You took a four thousand dollar chance on John Aid? [303]

A. If you wish to put it that way; yes. The money that we used in buying this land was not the money of Curtis, Collins and Holbrook Co. at all. It was Mr. Holbrook's and my money. I was willing to take a chance of four thousand dollars on a man like John Aid with Mr. Holbrook's money. At that time I thought that was a good business proposition.

Q. Well, what did you expect to get, the money back?

A. We hoped to be able to purchase the land later. The assurance we had before we loaned the money was only in the way that some things would give us a little better opportunity to purchase the land than someone else, that is all; and to an extent at least I considered the money that was loaned these people was safe to an extent, in that we had some sort of an obligation for them. We took the deeds to the land in the name of Chas. F. Gregory. Our reason for taking them in the name of Gregory was to assemble them. They had to be assembled in some one.

Q. Why did you not assemble them in the name of Curtis, Collins and Holbrook?

A. Mr. Holbrook and I had reasons for wishing

(Testimony of George E. Tuman.)

to assemble them in some other name than that of the company. Our reasons for not wishing to assemble them in the name of the Company were that the members of the company, that is, the principal members, Mr. Collins and Mr. Curtis, were not aware of the profit that we were making in the transaction.

Q. What would that have to do with taking it in Mr. Gregory's name?

A. Well, we did not wish, we did not care to have them know it, what the profit was that we were realizing on the transactions. [304] We received our money for these lands at different times. When I would get together a bunch of deeds in the name of Gregory and send them down to San Francisco to Mr. Holbrook and on his delivery of them to the Company he would receive the pay for them for the lands that he delivered. At that time he also delivered the deeds from the entrymen to Gregory.

Q. What difference would it make to you people that you took the deeds in the name of Chas. E. Gregory—what difference would that make?

A. Well, we thought it was better protection for ourselves.

Q. Well, in what way would that be better protection for yourselves?

A. As I said before, we did not care to have any member of the company know what the land was costing us.

Q. Well, they could find out very easily what they were costing you, couldn't they?

(Testimony of George E. Tuman.)

A. I don't know—they did not.

Q. Why, the minute you delivered the deeds from these people to Gregory, wouldn't they see who the party was who executed the deed?

A. What do you mean?

Q. Now, for instance, when George Hall had executed his deed to Gregory and you handed over the deed from Hall to Gregory to the Curtis, Collins & Holbrook Co., they could see there everything, they could get all the information they wanted from the deed which had been delivered to the Curtis, Collins and Holbrook Co.?

A. The deeds did not state only a nominal consideration.

Q. Well, then, wouldn't a deed from George Hall to the Curtis, Collins & Holbrook Co. only state a nominal [305] consideration? A. Yes.

Q. Then how would the Curtis, Collins & Holbrook Co. be any better informed by that than they would be under the system you took?

A. Well, we thought that in order to protect what we considered private knowledge, that it would be better to take the deed through an intermediate party; whether we were right or whether we were wrong about it I am unable to state that now. But that was the conclusion that we came to at the time when we commenced buying deeds with the object of turning them over to the Company.

Q. I am free to say I cannot quite follow your and Mr. Holbrook's reasoning when you took this title in Gregory's name, because I cannot see why

(Testimony of George E. Tuman.)

if the Curtis, Collins & Holbrook Co. paid for the land, they would not get all information by following the deeds, obtained by title through Gregory, that they would get if there was a deed from George Hall to the Curtis, Collins & Hobrook Co. direct?

A. We were receiving a certain stated amount of money for lands we delivered or sold to the company, which was on the scrip lands, and on all the first part of the timber and stone claim that were sold them $7.50 an acre, and the latest timber and stone claim $10 an acre; we did not in any case care to have any members of the company know just what we were paying for this land. In the first instance the scrip was put through the name of G. Howard Thompson at the bank, and the timber and stone claims were assembled under the name of Chas. F. Gregory; and the two assemblings were then passed over and sold to the Curtis, Collins & Holbrook Co.

Q. You turned the whole business over to the Curtis, Collins & Holbrook Co. at one time, the scrip land and the timber and stone land? [306]

A. No, they would be turned over at different periods of time. The scrip lands may have been turned over at one time, I don't know as to that, but the timber and stone claims were turned over at different periods of time. As soon as there were a few timber and stone claims, I don't remember how many, there may have been anywhere from 5 to 10, they would, as I recall it, be a delivery to the company of the title and we would receive pay-

(Testimony of George E. Tuman.)

ment for them. I could not tell you what amounts they were turned over in, now. I do not know now when the details of turning over the scrip lands were carried out. After the deeds from Gregory to Curtis, Collins & Holbrook Co., and from the entrymen to Gregory were turned over to the company, if the members of the company had really wanted to send a man out for the purpose of running down the matter of ascertaining the amount paid the entrymen for the land, they probably could have found out, but they did not do it.

Q. Well, now, just what protection did you get out of taking that land in the name of Chas. F. Gregory which you would not have gotten if you had taken the land in the name of Curtis, Collins & Holbrook Co.?

A. Because the Curtis, Collins & Holbrook Co. in getting land from Gregory—well, we considered it a protection at any rate.

Q. What is that?

A. We considered it a protection in getting it from one man when it was assembled.

Q. Protection from what? A. Protection.

Q. What protection—what kind of protection would you consider that?

A. Well, I don't know. [307]

Q. Well, now, as a matter of fact, were you not a little skeptical about the title to these lands at the time you took them up in Gregory's name?

A. You mean put them through Gregory's name for the purpose of, because we did not want them to

(Testimony of George E. Tuman.)

go direct to the company for any other reason?

No.

Q. No, what I mean is this, were you not a little bit skeptical about the way these lands were taken up at the time you took title under Gregory's name?

A. No, sir.

Q. You thought the titles were absolutely Simon pure and giltedged at the time you took them in Gregory's name?

A. Yes. I did not think that anything we had done, or that I had done, in connection with the acquirement of these lands was illegal.

Q. Now, when you advanced money to various entrymen to take up land to cover their expenses and so on, when would you take the notes from these people for the money you advanced?

A. It would be when they would borrow the large sum of money, like $400 which would be about the amount they would require for the final proof—I don't recall taking the notes at any other time. The amount of the note would be for the amount they had borrowed.

Q. Then you would take a chance when you advanced the expense money on it, would you?

A. I presume that I did, yes, that is, if I advanced it, I presume I did in some cases. I advanced a great deal of money to Mr. Remick and Mr. Heppe to cover expenses, without any security whatever, but which they looked out for. If I did not get a note from Elijah Taylor, John Lewis Gray and Jacob F. Aid, why I did not have any

(Testimony of George E. Tuman.)

written [308] security, I suppose—if I let them have the money.

Q. Well, these people you had just taken the chance with them that you would get their land? Is that correct?

A. If that is the way that was done. Of course I have no recollection now whether or not I got a note from them.

Q. As a matter of fact, Mr. Tuman, didn't you just turn this money over to your various lieutenants without wanting to know whether you got any security or not?

A. My recollection is that I got security, that is, in the form of a note or other evidence of indebtedness in some form from most all of the cases, but which ones might be excepted, I could not say now. I wanted the evidence of indebtedness whether I always got it or not. I kept an account of my transactions. I would have conversations with Mr. Remick about the people that had been located upon the land, I don't know how frequently, but I would have conversations about them, sometimes. He no doubt told me from time to time of the people that he located on timber land. And sometimes he would tell me the amount he had expended in expenses for them; he would render an accounting. I know M. J. Self; he lives near Prattville, possibly a mile and a half from the town of Prattville. I think I advanced him money to take up land. I am not certain whether I got a note from him or not; I am rather inclined to think I did not. It is hard

(Testimony of George E. Tuman.)

to say why I took a chance on him. I don't think I took a note from Mr. Heppe when I loaned him the money. I could not say now whether I took a note from Mr. Heppe when his wife proved up. I do not remember whether I took a note from [309] Eastman. I do not remember Henry Dodge Morely at all. I don't recall whether I got a note from Cooksey. I remember the name Reuben J. Mitchell. I don't remember the man. I think I loaned him money. I could not tell whether I got a note or not. I don't know whether John Aid took him over to look at the land or not. I remember the Gardenshires. I advanced them money. I think I got a note from them.

Q. Do you know what the Gardenshires' business was at that time?

A. All I ever saw the elder Gardenshire do was play cards, gambling; I don't know what else he done. I don't know what the younger one did. I remember the name Gertie Terrell; I don't remember as I ever met her. I think I loaned her money. I don't remember taking a note for it. I remember the Bakers, Margaret J. Baker, T. R. Baker, J. D. Baker, Mayme H. Baker and Ellen H. Baker. I loaned them money. I think I got a note for it. I don't remember who located them; Heppe probably did.

Q. I show you here what purports to be a certificate book of the shares of stock of the Curtis, Collins & Holbrook Company, and here is a returned Certificate No. 7 which has on its face:

(Testimony of George E. Tuman.)

"This certifies that George E. Tuman is the owner of two hundred (200) shares of the capital stock of Curtis, Collins & Holbrook Company, transferable only on the books of the corporation by the holder hereof in person or by attorney upon surrender of this certificate properly endorsed. In Witness Whereof the said corporation has caused this Certificate to be signed by its duly authorized officers and to be sealed with the seal of the corporation this 11th day of October, A. D. 1910. Charles [310] A. Shurtleff, Secrtary, T. D. Collins, President."

The seal of the Curtis, Collins & Holbrook Company is affixed. I also see that before the words "this certifies" appear the words at the top as a heading "Incorporated under the laws of the State of California. No. 7. Shares, 200. Curtis, Collins & Holbrook Company. Capital Stock, 1,000,000." Is that the stock that you spoke of as receiving—is that the certificate of stock that you speak of as receiving at the time that you had your difficulty with Mr. Holbrook?

At the time I had my difficulty with Mr. Holbrook I received a certificate for which the one introduced in evidence is a substitute. There was an older certificate, but it came, I think in a book that was destroyed, and this one was issued in place of the older one. It is the same 200 shares. It represents the same, 200 shares, although this is another certificate —that is the one I sold last December. Some years

(Testimony of George E. Tuman.)

ago the capital stock of the corporation was raised from $500,000 to $1,000,000. I don't remember the date. I don't know whether the change in the capitalization of the corporation was made before or after my trouble with Mr. Holbrook, I am not certain, But I think it was before my trouble with Mr. Holbrook.

Q. Now, the margin of the stub of the certificate states this:

> "Certificate No. 7 for 200 shares, issued to G. E. Tuman, dated October 11th, 1910. From whom transferred. Issued in lieu of old certificate No. 23, issued to G. E. Tuman for 100 shares & Cert. No. 24, issued to T. D. Collins for 100 shares and assigned to G. E. Tuman, July 20, 1905, both dated June 3rd, 1904. No. original Certificate: 23–24. No. shares, 100–100. Received Certificate No. 7 for 200 shares this 11th day of October, 1910. G. E. Tuman." [311]

At the time of my settlement or compromise of my suit with Mr. Holbrook, under the terms of that compromise, 100 shares of the 200 I was to get, was to be issued to Mr. Collins and held in trust by him for me for a certain period of time, which was done. When that time expired, Mr. Collins delivered it to me. I have forgotten the purpose of that, but it was some requirement that Mr. Holbrook made; it was a matter that only a little time would work out, some security that he wanted. I don't remember just what it was; I can't recall what it was. He thought, I believe, that I might come in with some

(Testimony of George E. Tuman.)

claim or something and this was held as security that I would not do it. It is my recollection, I cannot recall the exact circumstances, however, but it was issued to Mr. Collins and held in trust by him for me for a certain period of time. There was no increase on any of the stock by reason of the increase of the capital stock. The new certificates were exactly the same value as they were before. The reason of the increase was that the company had used up the $500,000, and then the capital stock was increased so as to get more money, by the sale of more stock. The ordinary and usual expenses in taking up a piece of timber land under the Timber and Stone Act in the case of an entryman would be his expense in the Land Office to make his initial entry and there would be the advertising in the newspaper, there would be the expenses of himself and his witnesses at the time of final proof and the payment of $2.50 an acre to the Government. I think that is all. An entryman would have to pay some testimony fees.

Q. Now, when you consider the mode of traveling and the time required to go from say a place like Greenville or Prattville or Taylorville to the Land Office first, he would [312] have to pay his expenses to go and look at the land, would he not—that would be some expense.

A. Possibly there would be some expense I could not say how much.

Q. Covering the expense that would be necessary to go and look at the land and make the initial entry of the Land Office from the communities where these

(Testimony of George E. Tuman.)

locators came from, that it is around Greeneville and Crescent Mills, Taylorville and in that vicinity, what would be the expenses to an entryman or what would be a sufficient fund to cover his expenses up and getting home after filing his application?

A. I suppose he would have to hire a team or some conveyance to first see his land; probably he could see it in one or at the most in two days; it was a one day trip from that vicinity to Susanville and a day returning; I think the ordinary charge for a team and a rig up in that country is about $4.00 a day; that would include a driver; the hotel expenses would vary from probably $1.50 to $2.00 a day per man.

Q. That would be $16.00 for a rig and $2.00 a day for four days that would be $8.00, that would be $24.00 that would be the expense that would cover?

A. I presume so, yes. Of course, assuming that the hired rig takes them out, the expense would be less if they used their own rig. I think somewhere around $13.00 was the advertising fee. It would take a three days' trip to make the final proof. The rig would probably cost about $12.00 and the meals for the applicant and his two witnesses at $2.00 a day would be $6.00 and for three days it would be $18.00 making a total of $30.00 as the expense for making the final proof. The price of the Government for the land per acre [313] was $2.50, the application usually covering 160 acres would make it $400. In addition to the initial expenses of $24.00, $13.00 for advertising, $30.00 for making final proof and $400 to the Government, there would be his location fee

(Testimony of George E. Tuman.)

which would amount to $25.00. That would be about $492.00 as the cost of the land per claim of 160 acres; that is probably what it cost the entryman.

Q. If a number of the entrymen operated together and acted as each others proof witnesses and bore the expenses of a rig or used their own rig, then the expense would be less? A. It would be less; yes.

Q. How much did you pay for claims ordinarily, Mr. Tuman?

A. We tried to buy them, I tried to buy them so as not to pay more than about $100 in the clear to the claim owner.

Q. How much at the most did you ever pay for any piece of land that you bought?

A. I think $10 an acre, $1600. I paid that either to Sorsoli or to Fred Scott, I am not certain which or both, I don't remember which: I know there was one or two we paid $10 an acre for the land. We paid that much for the land because they demanded it. There was no profit for me at $10 an acre.

Q. What was the incentive to handle the land in which there was no money for you, why would you?

A. We had been making some money on the others, we were not losing anything on these lands, yet not making anything, still we bought it.

Q. It cost you something to record the deeds and things of that kind; it would be a losing proposition would it not? [314]

A. Possibly it would. At the time we delivered these particular lands we were getting $10 an acre. The particular land that I paid $10 and which we got

(Testimony of George E. Tuman.)
$10 an acre for, I think. Some of the $10 was for stock.

Q. (By the MASTER). So your motive would be conceivably either to lose nothing or that the stock would appreciate in value after a while?

A. Yes, either one of those.

Q. Or that possibly this was part of a solid block of timber?

A. It was—at that time we wanted to deliver as much as we could and we felt that we were willing in some cases to take a little loss in order to deliver lands as we started out to try to do, to accomplish the object.

Mr. PIER.—Now seeing that diagram and seeing how the lands were arranged, there, does that refresh your mind in any way as to why you would pay such a big price for this land?

A. It was good timber land and we wished to deliver it to that company.

Q. It is practically separated from the big group of timber land that the company took up, isn't it—it is a small group?

A. It is a comparatively small group, yes.

Q. So that it would not be because you were desirous of consolidating timber land that you would have paid such a big price for the timber land?

A. It is good land.

Q. It is good timber land?

A. Yes, good timber land. Outside of these claims of Sorsoli and Scott for which I paid $10 an acre, I have forgotten the next highest price paid for timber

(Testimony of George E. Tuman.)

land to the entrymen. We paid for Robt. Cameron [315] and Christiansen's two claims something around $1,000 a piece, I think my recollection now. I think those were the next largest claims, but I am not positive. I loaned Christiansen and Cameron to take up their land. My impression is that I loaned the money that was probably used by them to Alex Cameron. My impression is that I gave the money to Alex Cameron. I could not say whether I gave him the money to cover their expenses or not. I remember something about the instance of the purchase of Christiansen's land. I saw them two or three times in negotiating the purchase.

Q. You went out the first time to see them where?

A. Christiansen and Bob Cameron worked together always, and I think I went to see them one time at a place called Butt's Valley, and another time, near, oh, Elizabethtown, the Quincy way, on the other side, 5 or 6 miles and the third time when they were on another mining property—I think those are the two times I went to see them. Rich Gulch might have been the place near Elizabethtown where I went to see them, although I did not know it by that name. On both occasions I discussed with Christiansen the price of the land.

Q. You offered him how much for it.

A. I probably offered him $600 or something of that kind at first, which he absolutely refused to take. I think I offered him about $100 over and above his expenses. I might have been very much provoked because he would not sell it to me at that price. I don't

(Testimony of George E. Tuman.)

know now. I don't remember whether Alec Cameron took me up to see Christiansen or not on the first trip. I don't remember W. J. Edwards the hotel keeper at Quincy having anything to do with the purchase of Christiansen's land. I cannot recall that Alec Cameron received any fee for locating these parties [316] on the land, he may have received a fee. I think that if I had arranged with a man to protect him in a fee at any time that I would have done so no matter what price I had paid for the land. I am not certain that the amount of money I paid Robert Cameron and Ivan Christiansen was the largest amount I paid for any claim outside of the Sorsoli and Scott claims. Just at this moment I cannot recall any other claims that I paid as much as $1,000 for. It just occurs to me that I paid approximately $800 for each of the two Wilcox claims.

Q. Do you remember John Huntington?

A. No, I don't remember him.

Q. Well, if he gave you a note for the money you would have a recollection of that fact, would you not?

A. Not necessarily, but I don't remember from whom I got notes and from whom I did not.

Q. When Mr. Remick would take patries out and show them the land and would incur an expense he would report the expense he had incurred in behalf of that party, would he not, to you?

A. He probably would at some time, some time subsequently.

Q. You would keep a pretty close check on the amount of money he was spending and what he was

(Testimony of George E. Tuman.)

spending it for, would you not?

A. I tried to, yes. I remember Mr. Hale of the "National Bulletin."

Q. Did you have any arrangement with him whereby he would publish these various publication notices and you would pay the publication fees after they had been published?

A. I don't remember of a definite arrangement of that sort, although I remember very clearly of his speaking [317] to me to use any influence I might have to direct business to his paper.

Q. Did you use your influence in that way at all?

A. I probably, I might have recommended his paper, some where at times. I don't recall for certain, however, in particular.

Q. Who would you suggest that to. Would you suggest that to Remick or Heppe, or would you suggest that to the entrymen?

A. I knew but very few of the entrymen personally before they had made locations, so if I suggested it to anyone it would be to Heppe or to Remick.

Q. Did you have any arrangement with Mr. Hale at all that any of these notices of publications that were sent over there to be published, you would stand good for them?

A. I don't recall a definite arrangement of that sort with him, other than I might have told him that any lands in which I might have an influence or purchase, that I would try and look out for any interest that he had. I might have said something of that

(Testimony of George E. Tuman.)

sort to him, but I can't recall any definite arrangement.

Q. Did you ever pay him for the various publications, for publishing the notices required by the law where you subsequently got the land?

A. I may have subsequently done so, but I can't recall now.

Q. Did you pay it to him in a lump sum, or did you pay each one individually as it was published?

A. I don't know. I don't remember whether I did or not, whether I did pay him or not. I remember Mr. Hall of the Plumas "Independent," although I think I only met him once. I don't remember having any discussion with him at all about the publication of notices [318] in his paper. I do not remember the circumstances of going into Mr. Hall's office and having a contract or a form of contract drawn up looking toward the satisfying of the Land Office that the publication fees had been paid. I do not remember going in there and getting blanks which would state to the Land Office that the publication fees had been satisfactorily paid or discharged which should be presented to the Land Office signed by Mr. Hall as each proof of publication was presented to the Land Office. I do not remember any conversation at all with Mr. Hall about the pay for those publication fees for the land that I subsequently acquired. I do not recollect having any account with Mr. Hall at all. I do not remember having any account with Mr. Hall through Mr. Remick. If Mr. Remick would go and run a bill

(Testimony of George E. Tuman.)

with Mr. Hall for the pay of these publication fees I probably would at that time have known it, but I don't recall it now.

Q. Do you remember ever paying Mr. Hall some two or three hundred dollars for these various publication fees?

A. Personally no. I do not remember sending him a check for it. I do not remember sending any money through Mr. Remick to him. I remember Edward L. Cooksey. I think I loaned him money. I do not recall the circumstances.

Q. If you handed the money out through someone else who was your general agency for distributing the $400 to pay for the land.

A. Well there were two or three agencies. If the money was not given by me directly to the entryman it would be handled by one of three or four other parties. [319]

Q. Who would be those parties?

A. It would be Heppe, J. W. Remick, A. W. Elam, Cameron in two or three cases, and John Aid. I don't know of anyone else to whom money was given out directly to the entrymen. I might have left money with Costar, I am inclined to think I did for somebody but whether it was for John Lewis Gray, Elijah Taylor, Robt. C. Taylor, Charles Moore and Butler, I am unable to say now. There was another Costar I have forgotten his first name, who I think went out once to locate people on land for me. Whom he located I don't remember. I remember Gertie Terrell. I might have left money with Murray for her. I

(Testimony of George E. Tuman.)

cannot say now. The money used for this purpose was kept in the Bank of Lassen County. I do not remember in whose name the money was kept now. I don't know whether I kept them in the name of Geo. E. Tuman; I only know that an order of mine for money would be honored. I don't think I opened the account there. C. H. Holbrook opened the account. I don't know whether Mr. Holbrook could check against the account or not. The money that we used in handling the land was our personal money.

Q. Where did you get the money to operate with?

A. Both Mr. Holbrook and I had a little money to begin there and we had some profit in cash out of the sale of the scrip lands to the company.

Q. Just how was the price of the scrip lands applied as you would turn in the land; would you be paid your $7.50 an acre in cash? [320]

A. The company paid us $7.50 an acre, supposedly in cash, although we would take, immediately pay back a certain amount of that in stock, so that actually a little of the money, of the $7.50, actually would not be received by us, only it would be just a matter of bookkeeping, to transfer the stock to our account. I could not say definitely what percentage of the purchase price of the land was taken in stock. We subscribed for 10% of the stock originally and we took our 10% in full. We actually took 10% and the balance of the purchase price was paid to us in cash. When the company was later organized our 10% issued to Mr. Holbrook, in Mr. Holbrook's name, paid up. I cannot tell just how the

(Testimony of George E. Tuman.)

record of the books was kept in the meantime. We had enough money coming to us out of the scrip land so that when we had delivered title to the 42,000 acres of scrip land, we were able to pay in full for our 10% of the stock.

Q. You had your 10% of the stock paid up before you began taking over this land under the Timber and Stone Act?

A. We had the stock that we were entitled to under the sale of the scrip land paid for before, that is, it was in the course of being paid for. You see, the stock was not issued until long afterward, it was paid for but was not issued, the stock was not actually issued to us yet. I presume the stock of the corporation was issued to us immediately after its incorporation in 1902.

Q. Then would Mr. Holbrook's stock have been issued to him in August, 1902, as soon as it was incorporated?

A. I am unable to say that now, but I presume it would be. Subsequently we took more stock in part payment of all of the timber and stone claims sold to the company also. [321] My recollection is, including both the scrip lands and the timber and stone claims together, Mr. Holbrook received 900 shares of stock, that is, we bought that.

Q. After the corporation was organized and began taking over all the timber land, did you operate under that contract fully up to the 42,000 acres?

A. Well, yes, we did all through pretty much; only the later raise of price. I think from the origi-

(Testimony of George E. Tuman.)

nal contract we were to take 10% in stock. That is my recollection.

Q. Do you mean you were to take 10% of the purchase price in stock or?

A. (Intg.) No, take 10% of the stock in the corporation.

The MASTER.—Q. He wants to know how much stock and how much cash you would get for the price, $7.50, what proportion of each?

A. I could not tell; I could not say that. I could not tell that now. The land was sold under the contract to the company at $7.50 an acre, and we were to subscribe and pay for 10% of the stock that was sold. Whether that would mean 75 cents an acre, taking 75 cents an acre in stock, I am hardly prepared to say. That is the way it would seem.

Mr. SHURTLEFF.—I will produce the agreement. The copy that I have, your Honor, is not quite complete; that is to say, it bears the signature of the three original parties, Mr. Holbrook, T. D. Collins and J. G. Curtis, with their acknowledgments, but there was to that contract attached a declaration upon my part and upon the part of Mr. Thompson, and the copy that I have refers to this; that part is simply copied and attached to the original, that is all. I am willing to produce the original at any time. I do not think the witness has seen a copy [322] of that contract in years—(addressing the witness) have you Mr. Tuman?

The WITNESS.—I have not seen a copy of it for 8 or 9 years.

(Testimony of George E. Tuman.)

Mr. SHURTLEFF.—I would have demanded the original paper, but I am willing that counsel should test Mr. Tuman's memory on that contract.

The MASTER.—Q. It is a fact according to your recollection Mr. Tuman, that out of the moneys which were received by Mr. Holbrook for the two of you as the purchase price of the sale of these lands that had been scripped, there was a fund of money, not stock, that you could use for the purchase of entried under the Timber and Stone Act?

A. At all times—yes, at all times after the collection and the turning over of the scrip lands to G. Howard Thompson and the payment to Mr. Holbrook and myself therefor, there was at all times a profit of at least $30,000 in cash which we used subsequently for the purchase of timber claims, there was at least as much as that at all times after that.

Q. What do you mean by $30,000 at all times—not a standing balance in the bank to your credit?

A. To Mr. Holbrook's credit, yes.

Q. That is to say, your balance at the bank or his balance would run at least that high, even although you were paying out money for the purchase of timber lands?

A. Well, Mr. Holbrook handled that fund, and his balance should have been that amount; at least he owed the partnership between himself and myself that amount of money, and so I had a right to assume that the partnership had that amount of money at all times subsequent to the sale of the scrip lands to the company.

(Testimony of George E. Tuman.)
(Questions by Mr. PIER.)

The money paid by G. Howard Thompson would not be paid to the partnership of Holbrook and Tuman; if it was paid [323] to either it would be paid to Mr. Holbrook individually. I don't know to what extent I was known by the people. When I met Mr. Curtis and Mr. Collins in 1902 at Prattville at Bunnell's Mr. Holbrook introduced me to them in a manner which would indicate that I was interested with him.

Q. He would not introduce you as "my Manager" or as "my foreman in charge in acquiring these lands" or so on, but he would introduce you in a way that would indicate that you were on an equality with him in the matters?

A. On the same sort of basis, of standing with him in the matter; yes. He did not indicate to these people in any way that I was in his employ. I don't remember talking with them about the contract between them and Holbrook as regards the acquiring of the timber land. I did not discuss with them about the selling of the land to them at all, not that I recall. I would not say that I did not. I don't know whether they understood that I was to get part of the stock.

Q. Were you and Mr. Holbrook trying to keep your operations secret from the Curtis, Collins and Holbrook Co.

A. Some of them. That is as to the price we were paying for the lands.

Q. This scrip that you purchased, you purchased

(Testimony of George E. Tuman.)

in the open market, did you not?

A. Yes, I think it was; at least we went out and sought it. I don't remember whether the scrip had a market price or not; when we found scrip the price of which was satisfactory, we would conclude a purchase of it. I could not say as to whether it had a market price at that time or not. [324] There were more people in the market at that time that wanted scrip. I don't recall anyone else that was in the market for scrip at that time other than Walker, Wheeler and ourselves.

The MASTER.—Q. You would not know, would you, Mr. Tuman, the people that wanted scrip?

A. No, I would not. I think a little bit of the scrip we bought for $3.50 an acre including the expense, the commission, etc. The highest price we ever paid was about $4.50. I think we got the largest blocks, largest pieces of scrip through the agency of Charles C. Swezey, from the Southern Pacific Company. We got very little Santa Fe scrip, if any. I don't know whether any of the Aztec scrip was used on our lands or not. When Mr. Holbrook and I had our settlement I got 200 shares of stock and $10,000. That was all I got.

Q. You say he bought 100 shares from you for $10,000. Was that it?

A. Yes, there was, as I recall it now, about 900 shares issued to Mr. Holbroook which he had purchased supposedly for the joint account. He sold 300 shares prior to the settlement, to Mr. Collins, I think, leaving at the time of the settlement 600

(Testimony of George E. Tuman.)

shares, and under our compromise settlement he gave me 200 shares of that and he paid me $10,000 for the other 100 shares, and I released all claims against him for other moneys, any profits. During the progress of the operations I got $15,000 for the sale of the 300 shares of stock and also some other money at times which I drew out of the account; not a great [325] deal though; it was just my living expenses, etc. My explanation of the number of small deposits in the Bank of Lassen County for carrying on these operations in the name of C. H. Holbrook is a presumption on my part as to that. The moneys for our joint account, as well as the stock, had always been received by Mr. Holbrook from the company, and presumably in starting the account in the Lassen County Bank he started it in his own name, carrying out the plan already used, of his conducting the business. Probably he sent me money only up there from time to time as I would need it. I did not acquire all the land that I gave descriptions of to Rem ick. I do not know as anyone located on any of the land that I gave descriptions of to Mr. Remick except those that Remick located. I don't know as anyone located on the land I gave descriptions of to Heppe except the persons that Heppe located. I do not know of anyone located on any of the lands that I gave descriptions of to Alec Cameron or to Burris except the people they located. In view of the fact that Rebecca Heppe made her entry in June, 1902, and John Heppe did not prove up until July 28, 1902,

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I must have been mistaken in stating that I had my talk and showed John Heppe the plat and gave him descriptions of lands upon which to locate people after he had made his final proof. I can't recall the date upon which I had my discussion with Heppe in reference to locating people on the land; I was in Susanville on one of my trips at about the time that Heppe and Forson were there, it was within two or three days after that time that I had my talk with Heppe. I thought it was when he made his final proof; it may have been some other time, but I thought yesterday it was when he made his final proof. It is possible that it was a few days after he made his original application. It was almost immediately after seeing him at Susanville. [326] The entries of J. D. Baker, Ellen H. Baker, T. R. Baker and Mayme H. Baker being made on the 9th day of June, I evidently had my conversation with Heppe about his entry before that time. I also loaned Heppe money to take up his land. I don't remember whether I told Heppe at the time he made his initial application that I would loan him money to take up his land. I might have told him how much he could get for his land if he took it up. I don't remember. I might have told him I might be in the market to buy it.

Q. Did you tell him what profit he could expect for taking up the land?

A. I don't know whether I would use the word profit or not; I might have told him what I considered the land was worth. I don't know whether I

(Testimony of George E. Tuman.)

told Heppe how much his expenses would be or how much it would cost him to take up the land; he could find that out or probably he knew that for himself. When I first met Heppe he was interested in some way in a little sawmill at Prattville. I don't know what he was doing at the time he took up the land or when I spoke to him about taking it up. I never knew when Heppe was not close run for money so I suppose he was pretty low at that time. I first met Heppe some time during the fall or summer of 1901 when I was in Prattville. I met J. E. Remick first in Prattville some time in the fall of 1901. At that time I have a sort of indistinct impression that he was helping, doing something for the hotel at Prattville. I don't know just now what it was. [327] I think they were putting a new foundation under the hotel. He was working there as a carpenter. During the year 1902 from June or May until December while these lands were being taken up, Mr. Remick was mining part of the time. I don't know what part of the year but I know he would be mining sometime. I am not sure that he was carrying on his mining operations at the same time he was making these locations. The mine I saw him working was called the "Lucky S" mine which is northeast of Taylorville about 10 miles. He could go there in about 3 or 4 hours, and could return the same day. I don't know where I met Remick when I had my first conversation with him in which I showed him a plat and gave him descriptions of timber land that I would like to see taken up. I think it was near the

(Testimony of George E. Tuman.)

middle of the summer. I could not say where I saw him. I don't know whether it was at Prattville or Taylorville or Greenville or the mine. I don't know what time it was when I went up to the mine to see him. I don't know whether it was before or after he began locating people on the land. One of the two trips I made up there was for the purpose of looking at the mine he was working in. I was looking at it with a view to becoming interested in the mine. I don't know whether this visit to the mine was before or after he began locating people on the land. The other time I went to the mine it was for the same reason. I don't recall any other than going up there to see him, probably for the same reason, I do not recall [328] any other reason.

(Examination by Mr. PIER.)

I don't think that he told me that he had a mine as early as 1901 when I met him first at Prattville. I had no business dealings with him during 1901. I never took any interest in his mine. I went up to his mine in 1902. I think the trip to the mine was taken and return made on the same day to Taylorville. We were probably at the mine 2 or 3 hours. At that time I was living at Prattville. Undoubtedly I stayed at Taylorville as I could not make the trip in one day to Prattville to the mine and back. I don't know who acted as guide to take us to the land; it may have been Remick or his brother. All these people that I loaned money to to make their final proof were all located upon land which I had previously furnished descriptions of to some of

(Testimony of George E. Tuman.)

those parties like Alexander Cameron or John Heppe or J. E. Remick. I do not remember writing Jackson Self a letter to this effect, saying that I was detained in the City longer than I expected and that the money that I expected to let him have to pay for the land would be a little late but for him to go to the County Clerk and state that he was unable to make his final proof for a day or two as the witnesses had not yet arrived. I think I talked personally with him before I made the purchase of his land. I could not say when, it was probably in or near Prattville. I think that my conversation was had probably with reference to the loaning of money to him. I don't remember anything about even purchasing his land, further than that. I think he came to me. I do not remember how I loaned him the money. [329] I do not remember how I sent him the money or if I sent it through Arthur Elam. I do not remember where I got the deed to his land, whether it was in Costar's office or not. That was the most likely place that I would get it but I am not certain. I do not remember how much I paid for the land. I remember Charles J. Monroe. I think I loaned him some money. I am not sure whether it was directly or indirectly. I think he delivered the deed to his land to me in Prattville. I do not remember the day he delivered it to me. I do not know how soon it was after he made final proof that he executed his deed. I don't remember his going with me to Prattville in my rig after making the final proof. I do not know that I paid for his dinner on the trip from

(Testimony of George E. Tuman.)

Susanville to Prattville after he made his final proof. I don't remember whether I handed the money to him personally or through somebody else for his land. I remember Chas. J. Allen. He took up some timber land, also his wife Carrie M. Allen. I loaned them money to take up their land. I loaned them something like $400 to pay for their land. I cannot tell whether I covered their expenses also with advances. I think I gave the money to Charles direct for his land, that is, the loan. I don't remember whether he gave me a note or not. Allen's business was mining. I think Heppe located him upon the land. I remember Jackson M. Self. I do not remember any talk with him about money to take up his land. I do not remember writing him a letter at the time of making his final proof. [330]

Mr. PIER.—"Q. Do you remember writing him a letter to this effect saying that you were detained in the city longer than you expected and that the money that you expected to let him have to pay for the land would be a little late but for him to go to the county clerk and state that he was unable to make his final proof for a day or two as witnesses had not yet arrived"?

Objection sustained to the above question, exception noted and answer allowed by the Master.

"A. No, I don't remember." I don't remember writing Self any letter nor that there was any delay in his making his final proof. I remember talking personally to Self. I could not say when, but I think it was in Prattville. I think my conversation

(Testimony of George E. Tuman.)

related to loaning him some money. I don't think it related to anything about purchasing his land. I think he came to me, I don't know where or when; I don't know how I loaned him the money or who I sent it to. I don't remember sending it through Arthur Elam. I don't know where I got the deed to sell Self's land. Robert A. Costar's store would be the most likely place that I would get it but I am not certain. I don't remember how much I paid for the land. I remember the name of Charles J. Monroe. I think I loaned him some money, either directly or indirectly, I am not sure. I think he delivered the deed to me in Prattville. I don't remember the day he delivered it or how soon after his making final proof. I don't remember driving him to Prattville after his making final proof. I don't remember how I handed him the money. I remember Charles J. Allen and his wife, Carrie M. Allen. They both took up some timber land. I loaned them some money to take it up, something like the usual $400. I could not say as to whether I covered their expenses also [331] in the money advanced. I think I gave the money to Charlie direct. I don't know whether he gave me a note for it or not. His business was mining. Heppe located him. I think all these people that I loaned money to to make their final proof were all located upon land which I had previously furnished descriptions of to some of those parties I have mentioned like Alexander Cameron, John Heppe, or

(Testimony of George E. Tuman.)

J. E. Remick. I cannot fix the date when the capital stock of the Curtis, Collins & Holbrook Co. was increased from $500,000 to $1,000,000. I am not certain whether it took place during the time I was acquiring these lands in Plumas County but I would think that it was after the purchase of these lands or about the time of the last purchase at any rate. The Curtis, Collins and Holbrook Co. purchased all their lands through Mr. Holbrook and myself, that is with the help of Mr. Golden and Mr. Elam we cruised all the lands and selected the lands which the company subsequently purchased. All the cruising was under Mr. Holbrook's and my supervision, direction and control. In reference to my original statement as to my settlement with Mr. Holbrook, I would like to say that I will have to correct my former testimony. I think I was wrong by one year, I think that my settlement with Mr. Holbrook was in 1905 instead of 1904 and that my first difficulty was in 1904 instead of 1903. I thought of that afterwards and I am quite certain that this later date is the correct one. The dates I would like to correct are that I filed suit against Holbrook in 1904 and it was 1905 that he sold his stock in the Curtis, Collins & Holbrook Co. When I was on the stand last week I made the dates one year earlier. The suit was filed in San Francisco in June, 1904. It was a suit for an accounting followed by injunction of the disposition of any stock that he [332] might have in the Curtis, Collins & Holbrook Company, or any moneys belonging to

(Testimony of George E. Tuman.)

the partnership action. My best recollection is that at that time there had been issued to Mr. Holbrook 900 shares of the capital stock of the Curtis, Collins and Holbrook Co. fully paid for which had been paid for out of the profits which we had made out of the land we had sold to the company. The increased capital stock of the Curtis, Collins & Holbrook Company was not all subscribed for and fully paid up. I think about 1,500 additional shares were taken up, making a total issue of the capital stock of the company of about 6,500 shares. That would be sufficient to pay for all the lands that were acquired by the Curtis, Collins and Holbrook Co. Of the lands which were scripped and sold to the Curtis, Collins & Holbrook Co. I cannot fix the date definitely when these lands were delivered to the company but it was late in the winter of 1901 and '02, I should think about February of 1902. We did not deliver the full 42,000 acres on the first delivery. I think the money paid for the first delivery of the scrip lands was paid to Mr. Holbrook in San Francisco. I don't know how much was delivered on the first delivery and I don't have any idea as to how long it was until the full 42,000 acres were delivered. Mr. Thompson through whom the title to the scrip lands passed was an officer of the Bank of California; I do not know what his position was. Mr. Irving F. Moulton, one of the incorporators of the company, was assistant cashier of the Bank of California. He did not take any substantial interest in the company nor did he

(Testimony of George E. Tuman.)

represent any one particular interest of the Holbrook, Curtis & Collins interests. [333] Most of the scrip was bought from the Southern Pacific Railroad Co. through the agency of Charles C. Swezey. I am inclined to think that we would be paid, that is, Holbrook and I, after the scrip had been placed on the land. We did not have to wait for our pay until the patent issued. We acquired by scrip probably 45,000 acres. We did not take the rest of the land up by scrip because scrip was hard to buy and we could not get any more. We would have taken it up by scrip if we could have gotten it. We could find no more after March, 1902. We could not acquire it at $6 or $7 an acre. The Southern Pacific had disposed of all its scrip that was available for use at that time. I met Robt. C. Taylor once a year or two ago. I knew there was such a man in 1901–02 or '03 but I can't recall personally meeting with him during that time. I don't remember discussing with him the timber land matters until at my recent meeting with him. I have no recollection of the Taylors stopping at Bunnell's on their return from Susanville at the time the land was purchased from them. I don't recall that Aid brought back from Susanville a group of men who stopped at Bunnell's. I remember one occasion when I saw Jacob Aid, John Aid's father and Tom Aid, his brother; I met them somewhere, at Prattville. I presume they were members of the party of which you spoke but I don't remember the party. All I remember is the meet-

(Testimony of George E. Tuman.)

ing of these two men in addition to John Aid. I met them and probably talked to them but I don't remember what the conversation was about. I don't remember the time nor the place nor the date nor the subject of conversation with Jacob S. Aid. I cannot recall that I made any arrangements at the Emerson Hotel whereby people that came there under certain circumstances would have their rooms paid for by me. [334] I think I cruised all the year 1902 in Plumas County.

"Q. Of course I know that your duties were such that you were busy keeping track of these entrymen and getting hold of their claims, that is, loaning them money to pay for their claims and also in getting the deeds, but did you keep on cruising land all the time that you were carrying on these operations?

"A. All that I could; yes."

I do not know how much I cruised after May, 1902, probably as much as 10,000 acres. I did not subsequently acquire all that land, we acquired a good deal after May, 1902; I could not say how much. I am inclined to think that I got a note from Burt Burris for the money that I loaned him but I am not certain. I remember Margaret J. Baker, T. R. Baker, Mayme H. Baker, J. D. Baker and Ellen H. Baker, all belonging to the same family. I loaned money to J. D. Baker to take up all five entries. I got a note for it, that is, J. D. Baker's note. His business at that time was a deputy sheriff or a constable. He was also a miner. I am

(Testimony of George E. Tuman.)

quite certain he was not running a hotel and saloon at that time. I think that I loaned J. D. Baker money to cover T. R. Baker's entry; I think I subsequently acquired the land that T. R. Baker entered. I might have given J. D. Baker a larger amount for his land than I did to the other four. I might have paid him $150 profit whereas I only paid $100 to the others but I am not certain. I think I had all the negotiations for the purchase of this land through J. D. Baker. I don't recollect any trouble in the purchase of these Baker claims. I did not personally give him the descriptions of the lands but he was located on the lands that were furnished by me to someone else for the purpose of having the lands located. I think Heppe located them. I think Heppe got his $25 fee for each of these locations. I don't recall J. D. Baker's ever making a complaint about receiving too little or too much for the lands that he was delivering. The fact that J. D. Baker only took up 80 acres of land whereas the rest of them took up 160 acres of land, I [335] don't know what influence that fact would have upon the price I was willing to pay for his land, that is, whether or not I would be willing to pay him $100 for that land or not. When we were negotiating for the purchase of the land from the entrymen we always tried to keep the price down. We tried to keep the purchase of the lands down as cheaply as possible and we hoped to get them at not to exceed $3 or $4 an acre if we could help it. We tried to figure it out on the basis of

(Testimony of George E. Tuman.)

giving the entrymen $100 and their expenses.

Q. * * * It did not make much difference what their expenses were, whether they came from Chico or whether they came from Greenville would you just still allow them $100?

A. Well, I didn't exactly allow them $100. I tried to keep it within those bounds. I remember the name of Gertie Terrell; I don't think I knew her. I probably got a note from her. I loaned Heppe the money for Rebecca Heppe to take up her land. I don't think I got a note for it. I don't knew whether I got a note from the Gardenshires for the money I loaned them. Henrietta Tuman is my mother; we did not loan money there. It would not be considered as being loaned from Mr. Holbrook and myself. I think that money was taken from private funds of the family. I am quite sure of it in fact.

Q. Was it your private funds or was it your mother's private funds?

A. Well, that is rather difficult to answer. My father and myself always had money together and presumably using some of that money, it would be considered using family funds. I don't know just how to put it. My father was alive at that time. I don't remember whether I got a note from Reuben [336] J. Mitchell for the money I loaned him. I think I loaned money to Edward L. Cooksey indirectly, I don't remember getting a note for it. I think we loaned money to John Huntington; I don't remember whether we got a note or not. My

(Testimony of George E. Tuman.)

impression is that I got notes from the four Aids. I don't know whether it would be separate notes from each of them or just altogether from John. I could not say now whether I got notes or not from J. L. Gray, Elijah Taylor and R. C. Taylor. I loaned money to H. D. Morley; I do not remember whether I got a note from him or not. I don't remember the name of John Vanornum.

Q. Going over your testimony, Mr. Tuman, it would appear then that you loaned all these people who were involved in these suits; you loaned the entrymen money to take up the land, with the exception of the Wilcoxes and the Andersons and possibly John Van Ornum and Mrs. Tuman; is that correct?

A. (Intg.) Yes, as far as I know I made loans to all of these entry people, other than those you have mentioned.

Q. That is other than the Wilcoxes and the Andersons and Tuman and Van Ornum?

A. Yes, as far as I can recall now. The capital stock of the corporation was increased from 500,000 to a million dollars because more money was needed to purchase these lands. I am inclined to think that the company carried a loan after having issued all of the 500 shares of stock. The money was borrowed from T. D. Collins and some from the Bank of California. It was some time during the spring or summer of 1902 that I had my first meeting with J. E. Remick in which we had [337] any discussion about timber. My purpose in showing Mr.

(Testimony of George E. Tuman.)

Remick the plan giving a description of good timber lands was that he had stated he had some friends that would like to locate on some good pieces of land.

Q. Did he say he had friends, or did you say to him he might have friends?

A. No, he said that he had some friends.

Q. That he had some friends that would like to locate on good pieces of land?

A. That he would like to locate on good timber land, if they could be found.

Q. Why did you care about his friends?

A. Well, I don't know as I did care about his friends, but he evidently wanted a chance to accommodate them and make a little money, I suppose.

Q. How would he know that he could make money that way?

A. I suppose before the conversation ended that I probably told him I would help him to secure a location fee in connection with it.

Q. How could you help him to secure a location fee?

A. In case that his people located or secured lands and I subsequently bought them.

Q. Then you were more or less desirous at that time that people would locate on these timber lands that you have cruised, were you not?

A. Why, I would like to have seen them located on these lands, yes.

Q. And you would like to have people locate on

(Testimony of George E. Tuman.)

those lands that you had some way to have some influence with them, would you not?

A. Well, I might have hoped that.

Q. Would you have handed those out, would you [338] have given those descriptions to anybody that came up and asked you for them?

A. Practically anybody; yes.

Q. Would you have loaned them money too, to take up the land?

A. Well, I think I would; I think probably would have reserved that right.

Q. You think you would have reserved that right?

A. The right to loan the money, if I chose to do so later.

Q. Now, Mr. Tuman, Mr. Remick's fee would be dependent upon whether or not you subsequently got the land, would it not? A. Yes.

Q. When Mr. Holbrook was up in that country, did he know the method of your operations, did you discuss them with him?

A. I think as far as I know Holbrook knew all that I knew.

Q. Did he know that you were loaning money to entrymen to take up the land?

A. He certainly did.

Q. He knew that you had given out these descriptions to Heppe and Remick and that they were to be given a location fee of $25 if you subsequently got the land that they located on?

A. He did; I tried to keep him fully informed

(Testimony of George E. Tuman.)

of what was doing. I cannot fix the date I had my first talk with Remick about the mine. I think it was just before I had this talk with him about his wanting some good timber land. [339] It might have been the same day. I could not tell you within a couple of months of the time of this first conversation. I do not know where it was, whether at Taylorville or up at the mine at Prattville. I cannot tell you how much land I showed him the first time. It was probably 10,000 or 12,000 acres. I could not say whether he came to me or I went to him.

Q. What would bring him to you, if he came to you?

A. He might have heard that there were locations of land being made in the country there, I think he did—I think he had.

Q. Was this first batch of land that you showed him was that taken up by people?

A. Some of it was.

Q. Do you know whether all of it was, or not?

A. No, I don't.

Q. Was a substantial part of it taken up?

A. Quite a large part of it was.

Q. Did you show him any more subsequently?

A. I think I did, some; I do not think a great deal; I think it was practically all at one time.

Q. Did you have any talk with him about loaning the people the money, that he located on the land to pay for their land?

A. Do you mean at that first meeting?

(Testimony of George E. Tuman.)

Q. Yes.

A. I don't remember whether I did or not.

Q. How soon after that first meeting did you have a talk with him that you would arrange to loan money to people that he located on the land?

A. I could not say, I could not fix any time; I could not fix any time as to talking to him about it. But it is quite likely that at some time subsequent to the [340] showing of the plat that we would talk about loaning money to these people, but I don't know when.

Q. There were a lot of expenses to be covered in the meantime. Did you advance him any money to cover those expenses?

A. I may have done so.

Q. Now, under what circumstances would you have loaned him the money, advanced him that money?

A. I could not say now. I don't know just what circumstances or arrangements, if any, there was.

Q. Haven't you any idea at all of how the transac- took place?

A. Not that part of it. If I advanced him money, as I may have done, I would probably keep an account and subsequently charge it against the purchase of the land.

Q. Suppose you didn't get these lands that these accounts were charged against, what would have been the result?

A. Lost my money that I invested, I suppose.

Q. Simply a charge to profit and loss?

(Testimony of George E. Tuman.)

A. Simply a charge to profit and loss.

Q. If you did subsequently get the lands, you charged these advances up against the lands; is that the idea?

A. That is practically the idea, yes; that would be the idea, of course.

Q. And there would be no way of holding the entryman for that money except as you were able to take it out of the purchase price that you were paying for the land—there was no way, when you advanced the money to Remick and Remick expended it, to hold the entrymen for the advanced money, was there?

A. Not any money to Remick I should not suppose there would be. [341]

Q. Did Remick do any cruising with you during the year 1901 and 2?

A. What do you mean by cruising? Do you mean out in the field with me?

Q. Did he go out in the field with you?

A. I don't think so. I don't think Remick went out in the field with me on any cruising expedition during 1901–02. Heppe went out with me in the field only to drive a team at times. I never showed Heppe very much land at any time. Every time he had some entryman to show some land to I would make him come to me and get a description of land. My reason for dealing differently with Remick than with Heppe was due to the difference in the men. There is no special reason that I can recall now as to why I dealt differently with the two men. A great many

(Testimony of George E. Tuman.)

of Heppe's locations were made first. After Remick began to locate people I don't think Heppe located very many. There was no particular reason in changing from Heppe to Remick. I don't remember any particular reason for changing from Heppe in favor of Remick. I just quit giving Heppe descriptions of land. I had no trouble with Heppe at all. I don't remember what I told Heppe to get rid of him,

Q. What was the reason Mr. Tuman?

A. There was none. He wanted them—

Q. There was no reason at all?

A. He wanted me to give him more descriptions, but I did not do it, that is all. I don't think I ever had any trouble with Heppe about money matters. I do not know how long it was after I acquired title to the first timber and stone entries that I delivered [342] the deeds to the company. I do not know how many I delivered the first time. I would not be in a position to state that definitely for as fast as I got any deed from the entrymen to Gregory, one deed or more at any time, I would forward them to Mr. Holbrook here in San Francisco and he would make disposition of them to the company. I don't know how he delivered them to the company nor who took delivery of the deeds on behalf of the company. C. H. Holbrook, Jr., for a while at least was helping his father and that may be how it happens that he recorded all the entrymen's deeds. In reference to the Branleys lands I do not know on what ground the entries were cancelled. I did not try to

(Testimony of George E. Tuman.)

defend the claims in the department.

Q. That would be $2,500; didn't you make any effort at all to save that $2,500 in the department?

A. No. I just let it go by the board; I heard of the contest as to the validity of these entries some way but I don't know whether it was the Branleys or where I got it from. I took no steps to recover the money from the Branleys. I think I talked with Mr. Shurtleff, an attorney, some about recovering the money from the Branleys, a little, I am sure I did, I must have. I didn't advise with any other attorney about it and I did not do anything in reference to it. I have not any idea at all about whether I advanced any expense money to Heppe and Forson in going out to look at the land, or to take it up.

Q. Now, I am going back upon a matter I have taken up before, and yet it is not clear to my mind Mr. Tuman and I do not believe the record is clear on the point, and that is this: what was your purpose in giving Heppe a description of good timber land? What was your purpose in giving [343] Heppe a description of good timber land? What was your purpose in giving it to Heppe? A. At his request.

Q. Heppe would come to you and ask you for them —that is, Heppe had made his own entry, and then he made subsequent entries, located other people on the land; what was your purpose in giving Heppe these descriptions of the land? A. My purpose?

Q. Yes, what was your purpose in giving him the description of these lands?

A. Well, he requested information or description

(Testimony of George E. Tuman.)

of lands that were good timber lands for persons to locate on.

Q. Did he request it or did you?

A. He requested it; yes.

Q. Did you volunteer it? A. He requested it.

Q. Would he request it each time that you gave him a description of land? Did he come and request a description?

A. Yes; he was asking all the time to furnish him more.

Q. Were you charging him anything for the information you were furnishing him? A. I was not.

Q. When you gave Mr. Remick a description of 10,000 acres of land, good Government timber land, what was your purpose in giving him the description of so many acres of good timber land?

A. I gave it to him—this particular description of 10,000 or 12,000 acres as I have stated was all together, [344] in one body.

Q. That was out in 25–10?

A. That was in 25–10.

Q. What was your purpose in giving him all that?

A. Well, just as I said; I think that he wished to have descriptions of land to locate friends on, and I knew of this body of timber and gave it to him, gave him the plats of it.

Q. You wanted it to be located, didn't you?

A. I had no objection to its being located.

Q. You wanted it to be located?

The MASTER.—It is perfectly evident that was his purpose.

(Testimony of George E. Tuman.)

Mr. PIER.—Yes, but I just wanted him to say that he wanted it located.

The MASTER.—Q. The way you evade the question, Mr. Tuman, it looks as though you were trying to hold something back.

A, Yes, I hoped to be able to buy it later; I was glad to see it located.

Q. That was your idea in giving these lists out, to have the public locate on that land and have Mr. Remick as the source of information, was it not?

A. Yes. Mr. Remick told me about the land in the first instance in the early part of 1902, after he told me about it I cruised it. I don't know where he told me about it; it might have been up at his mine.

Q. What would be his occasion for telling you about this piece of timber land on Taylor Mountain?

A. He knew I was interested in timber land and [345] told me about it. I think he told me about two pieces of timber land, one I did not care for and the other was this body of timber in 25–10. At that time I do not think we had any talk about his locating people on the land if the timber was good. I do not recall that he suggested he would get entrymen to take up the land. He made that suggestion I think after I made an examination and he knew I had been there. I don't know how he knew I had been there. I may have met him and told him. I think Flam and I went out there together. I think my subsequently giving him a list of good timber land in there came about as a result of the fact that he first told me about there being good timber in that vicinity.

(Testimony of George E. Tuman.)

Q. Now, just how did that come about? Just what was the connection between the information he gave you in the first place and his subsequently getting the description?

A. As near as I can recall it, it would be just this; that he told me about this tract of land, there being a tract of land in this vicinity, 25–10, and at some time, probably during the early part of the summer, as near as I can remember, as soon as I could I went over and made an examination of it, cruised it in fact, and subsequently to that time he came and asked me about it, about the land, and what I had found there, and at that time probably I gave him the list of the land, which I had found to be good timber there.

Q. Did you tell him whether it would be such land that you were desirous of getting for the company?

A. That I was desirous of buying, yes, I think I probably did; I probably told him that it was such land as [346] I would like to buy.

Q. Did you also tell him about if he got people to locate on that, you would protect him for his fee on the land?

A. I think I did—I probably would. I don't recall that I did use those words, but I would be very apt to.

Q. When did you first inform him that you would be willing to advance the entrymen costs for taking up the land?

A. I don't remember of informing him that I

(Testimony of George E. Tuman.)

would advance the costs, although I may have advanced him money.

Q. That is expense money?

A. Well, which was used for expense money; I don't remember of specifically advancing expense money in any particular instance, but I advanced him money—I presume it might have been used for that.

Q. You often advanced money to the entrymen to make their final payments with, did you not?

A. Oh, yes.

Q. How would you find out that they had entered upon the land, filed on the land?

A. I kept records of the entries made from time to time through all that country.

Q. Who gave you that information?

A. I secured it from the Land Office and secured it from the County records.

Q. Did Mr. Remick report to you the people that he located on the land? A. I think he did. [347]

Q. Would you give me a report as to what the probabilities were of purchasing that land?

A. I don't think he ever made a report in that way.

Q. In what way would he report?

A. He probably would report the entries—the locations that he had made—yes, the locations that he had made.

Q. Did he tell you whether or not these people would want money to make final proof with or not?

A. He would no doubt at some time after the locations were made.

Q. Why would he be telling you that they would

(Testimony of George E. Tuman.)

want money to make final proof with?

A. He probably knew their financial circumstances; I don't know.

Q. How would he know that you were advancing the money?

A. How would he know that I was advancing money?

Q. How did he know it? Why would he be reporting it to you?

A. I had probably told him I would loan money on claims.

Q. Aren't you pretty certain that you did, Mr. Tuman?

A. I think I must have at some time or other, some time during the summer.

Q. Now, on page 666 of the transcript, I asked you this question: "Q. Didn't you tell Heppe that he could assure the people that you would get the money for them or provide to loan the money with which to take up the land and cover the expenses?" And your answer was: "A. Heppe had just borrowed from me money for his own land, and I [348] presume that he assumed and I probably let him assume the fact that I loaned money to other people also. He informed me that he had a great many friends who would like to take up land." Now, was there not more than a mere assumption on Mr. Heppe's part when he located these various people on the land?

A. I don't know whether I could put it much stronger than that or not.

Q. Heppe made his entry May 23d, 1902, but he did

(Testimony of George E. Tuman.)

not make his final proof until the latter part of July, July 29, 1902, and that was the time when you stated that you loaned him the money. Now, between those times he located the Bakers and Pierce and wife and Gertie Terrell and Charles Pierce and Monroe and the Gardenshires and Benner. Don't you suppose that those people, all those people you have testified that you subsequently advanced money to—was not Heppe working under an understanding that you would advance that money to them at the time they would make the final proof?

A. I don't think that I ever promised beforehand that I would loan the money in any instance, but I had been willing to do it, and I am sure that I gave Heppe too the right to assume that if everything seemed to be all right, that I would loan the money, and as far as I know now, that is as far as I ever went; I cannot recall of being any more definite than that.

Q. Now, I asked you this question on page 666: "Q. Did you give Mr. Heppe any instructions as to the class of people he should get to take up the land?

A. Probably I told him that I thought he ought if he located people, to get reputable people." What difference did it make to you whether it was reputable people, or not, who took up this land. All you wanted was the land, [349] was it not?

A. Yes, I wanted a chance to buy the land.

Q. Wouldn't there have been just as good a chance from disreputable people as from reputable people?

A. Well, I presume it would be; however, that is what I did tell him.

(Testimony of George E. Tuman.)

Q. What was the purpose in getting reputable people?

A. Why, I do not think there would be any specific purpose, only that—I don't know of any specific reason other than the general proposition of preferring reputable or good people possibly to deal with."

I think Heppe located Willard C. Brown and was protected in a fee for so doing. Also Brown's wife. I don't think all the scrip land was delivered to the company when we began delivering timber and stone entries. I think the big bulk was delivered then. I don't remember C. L. Stilson, a notary at Chico, but I may have seen him. I don't know that I ever sent him any descriptions of land that I would like to purchase for the purpose of preparing deeds. I remember none of the circumstances surrounding the loaning of the Aids or the Taylors, Moore and Butler any money to take up their land. I don't know whether I gave Elam the money to give them. With the single exception of McManus I purchased every parcel of land which I had cruised and given descriptions of to Heppe, Remick, Cameron, Head and others upon which they located entrymen. I don't think there was any other exception.

Mr. SHURTLEFF.—"Q. The company did not get Elmer Ross' claim?

A. That is true, Elmer Ross'. I was in court when Mr. Heppe and Mr. Aid were on the stand and testified. [350]

Cross-examination.

I first discovered this body of timber land that Mr.

(Testimony of George E. Tuman.)

Holden and I cruised in 1896. At that time I made a preliminary cruise. I cruised it in 1901. Between 1896 and 1901 I did nothing with it. I have been interested in timber land since 1895. C. H. Holbrook, Sr., had been familiar with timber and timber lands and the method of acquiring same much longer than I had. The contract between Mr. Holbrook, T. D. Collins and J. C. Curtis covered about 42,000 acres. I sent for Mr. Holbrook to come up to Plumas County where I was cruising in the latter part of June, 1901, after Mr. Golden and I had been making a detailed investigation for about two months. My purpose in sending for him was to help in the promotion of some plan of acquiring these lands by scrip. As a result of that interview Mr. Holbrook and Mr. Golden went east some time during the month of the September following for the purpose of endeavoring to interest capital to handle the deal. On that trip he was not successful. He made another trip in the latter part of November at which time he signed a contract with T. D. Collins and J. G. Curtis. He made a third trip in the next month, December. The reason for this trip was, I believe, that there were some details that were found in accordance with the first contract with Collins and Curtis that could not be successfully carried out and he went back for a modification. I don't remember what those details were. I saw Mr. Holbrook between the second and third trips. Between the second and third trips we bought Mr. Golden out. Mr. Holbrook and I were equally interested in the enterprise. Mr. Holbrook's

(Testimony of George E. Tuman.)

explanation for taking the contract in his name along was that on meeting Mr. Collins and Mr. Curtis and in drawing this contract up that he found them rather favorably disposed to signing the contract then and there and wishing to clinch the matter without the contract having [351] to be sent out here for my signature. He practically represented to them that he was alone in the transaction or at least had authority to sign alone. Mr. Holbrook's subsequent purchase of scrip was made pursuant to the contract that he had entered into with Mr, Curtis and Mr. Collins. Mr. Holbrook and I paid the costs, expenses and commissions in connection with the acquisition of this forest reserve.

"Q. Now, that deal, as I understand, as you explained it, is about as follows: That you had agreed to acquire these Government lands by the application of forest reserve, that you and Mr. Holbrook were to acquire the forest reserve, that you would contract for it and that a deed conveying it to Mr. G. Howard Thompson was deposited in the Bank of California and as against that for the payment of these lands Messrs. T. D. Collins and J. G. Curtis would deposit money which would be paid whenever I would certify that the title to that particular piece of forest reserve was acceptable and good?

"A. Yes, that is as it was explained to me."

In taking up this land by the scrip method, I represented only Mr. Holbrook and myself. I would not have anything to do with Mr. Collins or Mr. Curtis.

"Q. Now, referring to the method of acquiring the

(Testimony of George E. Tuman.)

stock, the delivery of stock, the disposition of the stock covered by the increase of the capital stock of the company. Was or was not the method pursued something of this character: that as moneys were required to make payments for these different lands purchased by Curtis and Collins, that they would pay for them and that that money advanced would be repaid them usually by their taking stock to cover it?

"A. I think that was always the case; they took stock to cover the money they put in."

As between myself and Holbrook the plan practically was that I was to find the timber and he was to arrange to finance it. He attended to the details here, the financing, and I did the field work. I don't know how much forest reserve had been acquired on the 15th of August, 1902, at the time the corporation was formed. I can't tell how much forest reserve was covered by the last purchase from the Southern Pacific Company. I don't know anything about the details of the last purchase from the company of forest reserve. The original application for the timber and stone entries in a great many cases were made before the *in* [352] incorporation of the company. I have not seen the contract between Mr. Collins, Mr. Curtis and Mr. Holbrook for many years.

Witness is examined as to his recollection of the contract between Curtis, Collins and Holbrook.

My first meeting with T. D. Collins, E. S. Collins, and J. G. Curtis was in 1902. It was after the contract was signed, which was in November, 1901, I can't fix the month. I met D. G. Curtis much be-

(Testimony of George E. Tuman.)

fore I did the others. I might have met D. G. Curtis during the late winter of 1901 and '02, it would therefore be before any of these locations had been made but I am quite certain that I did not meet the other gentlemen at all after these timber and stone locations had begun to be made. I met the other three in Plumas County. The money to pay for these timber and stone lands would come indirectly to Mr. Holbrook and myself from Mr. Collins and Mr. Curtis in deposits for stock in the company. No one but Mr. Curtis and Mr. Collins made any substantial purchase of stock from the company. When I first met Mr. Collins and Mr. Curtis I think the party consisted of C. H. Holbrook, J. G. Curtis, E. S. Collins, T. D. Collins and D. G. Curtis and no one else. I think at that time there was a conversation touching the lands which had been turned over to the company. All that I can recall of that matter was that in the course of the general talk about the affairs of the company, which of course had just been recently organized, that the titles were spoken of, by whom I am unable to say, but somone of the party made some remark about the timber and stone titles causing Mr. Holbrook to very emphatically assure them that the timber and stone titles were perfectly good and the titles under the timber and stone Act were perfectly good. [353]

"Q. The Assistant United States Attorney asked you this question: 'Q. Will you state that a little more clearly, I don't want to be wrong in the matter, was Mr. Curtis and Mr. Collins to buy the land from

(Testimony of George E. Tuman.)

you at $7.50 an acre or was the corporation to buy the land from you at $7.50 an acre? A. I don't know just how that would be put. Mr. Holbrook and I were to receive $7.50 an acre for the land, and they contemplated the formation of the company, and Mr. Holbrook and I were to receive for our $7.50 an acre part cash and part stock, and the 10 per cent subscription that Mr. Holbrook put in for himself and me in that company was part of the purchase price of these lands. I don't know just how you would want to place it, but those are the facts.'

"Now, according to that answer Mr. Tuman, you were to receive this stock on account of the purchase price?

"A. We so considered it. But just how the bookkeeping was done or how it was handled I of course am not able to say: but that is the way we considered it."

I did not exact from any of the people to whom I loaned money for the purpose of paying for the land upon which they were making final proof a condition for the making of the loan that they should promise to convey the land that they should acquire by the use of the money to anyone. I did not myself ever make any contract or agreement with any of these different entrymen who took up the land and finally conveyed it to Mr. Gregory prior to the making of their initial entry by which agreement they agreed to sell the land to me or in which I agreed to purchase it from them. I never authorized J. E. Remick or Heppe or Cameron or any of the different peo-

(Testimony of George E. Tuman.)

ple who located these parties upon land and through whom I loaned money to the entrymen to make such a contract with the entrymen. I never made any contract or agreement with any of the entrymen prior to their making final proof under and by the terms of which they agreed to sell and convey the property. I never authorized Mr. Remick or Mr. Heppe or any of the others who located parties on land to make any such contract. The land which Mr. McManus took up was never deeded to Mr. Gregory or anyone connected with me. No suit was ever commenced for that money. The loss was Mr. Holbrook's and mine. Neither Mr. Collins, Mr. Curtis, nor the Collins, Curtis & Holbrook Company ever reimbursed us for the loss. Mr. Lawrence's entry was canceled after he deeded to us. I am inclined to think we were paid for Mr. Lawrence's land by the company. Mr. Lawrence's land was deeded to the [354] company and the company paid for it. I think McManus was the only one where we loaned money that we did not get back.

"Q. The Assistant United States Attorney asked you this question: 'Q. Were you not practically sure you would get the land later before you loaned the money? A. Well, only in the way that some things would give us a little better opportunity to purchase the land than someone else, that is all; and to an extent at least, I considered the money that was loaned these people was safe, to an extent, in that we had some sort of an obligation from them.' "

Q. What do you mean by that, what kind of an

(Testimony of George E. Tuman.)

obligation did you have from them at the time you loaned the money?

A. I would have the indebtedness against them, a claim for money.

Q. Is that what you referred to?

A. That is what I meant by obligation, yes.

Q. Was there any other obligation?

A. None that I can think of.

Q. Had they agreed, any of them agreed, to sell or convey to you?

A. No. When the purchases were consummated by which I acquired the land from the entrymen in paying the purchase price the notes would be included. Nearly all the money received from Mr. Holbrook by me for carrying on the location of these lands was through the Lassen County Bank. Possibly a little may have been sent me direct by Mr. Holbrook. I don't recall giving anyone money prior to making their initial location. I may have given Mr. Remick or Mr. Heppe money. [355] I don't remember giving Jacob Aid $100 the day he executed a deed at the Park Hotel in Chico. I cannot recall any reason why I should be paying any money to Jacob Aid or any other entrymen for their lands secretly or in a concealed way.

"Q. Why did you ask Mr. Remick and Mr. Heppe and these different parties to make the locations? What was your purpose or object in doing that?

"A. I did not ask them."

There was nothing in the transaction that I desired to suppress or keep secret. They applied to

(Testimony of George E. Tuman.)

me to get them descriptions for good timber lands to locate their friends on, which I did. Publicity was what I was after. When I stated that the land was taken up under my supervision, direction and control, I did not mean it in the sense that I had any control of the entrymen to compel them to sell the land to me or anyone else that I might designate. At one time Mr. Holbrook expressed himself to me to the effect that he did not want T. D. Collins and J. G. Curtis to know what these lands were costing us At that time he was referring particularly to the timber and stone claims. He said it is none of their business, we have a contract with them to deliver the land at a certain price and it is really none of their business what it is costing us. The only thing that is material to them is that they get the land. I was never authorized by T. D. Collins or J. G. Curtis or anyone else connected with the company to act as the agent of the company in purchasing the lands directly for them or either of them.

"Q. So far as you have any knowledge and so far as you know, do you know whether or not Mr. C. H. Holbrook, Sr. was ever appointed as an agent directly or indirectly to purchase lands?

"A. He never was an agent of theirs to my knowledge.

"Q. Is it a fact, Mr. Tuman, that you and Mr. Holbrook in all these transactions between yourself and Mr. T. D. [356] Collins and those who made up the Company, that is, E. S. Collins, J. G. Curtis and D. G. Curtis, were acting as strangers and that

(Testimony of George E. Tuman.)

you were acting in your own behalf and that they were looking out for their interests?

"A. We certainly were looking out for ours.

"Q. What were they doing about theirs?

"A. I suppose they were taking care of themselves, at least, I assumed so."

I do not know whether C. H. Holbrook, Jr. got Will Lawrence's note for the money loaned him. We used our own funds in paying for the timber and stone lands which were purchased and subsequently deeded to Mr. Gregory.

Redirect Examination by Mr. PIER.

D. G. Curtis probably came out in January or February after the signing of the contract and after Mr. Holbrook's third trip east. He did not come out with Mr. Holbrook. The Collinses and Curtises came out together and made the trip of inspection through Plumas County. I did not see them altogether again that year. T. D. Collins was never up there again. I have seen him in years since here and also in the east. The older Curtis, I think, I only saw the one time up there in Plumas County although I have seen him many times since. I did not see either of those two that year afterwards. I might have seen D. G. Curtis and E. S. Collins that year again. I had to be satisfied with Mr. Holbrook's arrangement in which he represented to Curtis and Collins that he had authority to sign a contract in his own name and alone, because it had been done. He never gave me any written assurance that would protect me. The Curtises and Col-

(Testimony of George E. Tuman.)

linses subsequently knew that I was interested in Holbrook. They understood it before all the lands were turned over. I do not know whether they knew before the first lands were turned over or not. I know they knew of my connections before all the timber and stone lands [357] were turned over. I tried not to allow Mr. Holbrook to convey the impression to them that he was the whole thing. Whatever expense there was in the original cost of the scrip, the purchase price of it was paid by Holbrook and myself, and the money that was paid for the scrip was the money that had been deposited in the bank by Curtis and Collins against the scrip. Whatever expense had been necessary to be paid out before the scrip would be transferred had all been paid by Mr. Holbrook and myself. The bank paid the price of the scrip. All the commissions and other expenses necessary for the [358] transfer of the scrip were paid by Mr. Holbrook and myself. Those expenses would be notary fees, expenses of clearing title if any and abstract fees. I have no idea what that would amount to. That probably would amount to $1,000. I hardly think the attorney's fees were paid before the scrip was paid for. I think we made the attorney wait. The lands that were purchased were paid for by moneys deposited by Curtis and Collins. They subsequently took stock for the money they advanced to pay for the land. The conversation between Mr. Curtis and Mr. Collins and Mr. Holbrook as to the title to the timber and stone entries being perfectly good arose out

(Testimony of George E. Tuman.)

of the fact that originally it was contemplated that the land should be acquired by the purchase of scrip and I presume it would be quite natural when some timber and stone lands were being acquired for someone to ask about them, that is not the time when the titles were turned over they would ask were they all right. Mr. Holbrook would say "Yes," that is the idea. I handled all the money in buying the timber and stone entries. The Branley lands were conveyed to the company and I think we were paid for these lands. We had no trouble with the company afterwards about the money received for the lands. The timber and stone claims were about the same price as the scrip. I do not think that we would have furnished these descriptions to Heppe and Remick and others to have people locate on them if we could have scripped the lands.

Recross-examination by Mr. SHURTLEFF.

Mr. Holbrook never denied that I had an interest in the contract. Our subsequent controversy arose out of what amount I was to have. He thought that he had contributed more to the success of the enterprise than I had. [359] We did not receive $7.50 per acre plus the cost of the scrip. The original deed of John W. Aid to Charles E. Gregory is in the handwriting of my wife. That first letter of "Ninth" is just as she would make it. It seems as though it must be hers. The last four letters are not as she would make, but other than that it seems to be her handwriting. (That last deed is a filled-in form of the ordinary legal blank) The original deed of

(Testimony of George E. Tuman.)

John Louis Gray is all of it in my wife's handwriting; that is the filled-in portions. The original deed of Charles J. Monroe to Charles E. Gregory, all the filled-in parts, are typewritten, probably with a typewriter we had at that time, I am not certain now. I had the typewriter at Bunnell's. I am not certain that it was that particular typewriter. I don't know of any other typewriter in that country at that time. I don't remember ever getting the Aid's deed personally. I don't remember ever meeting Aid's father and two brothers at the Park Hotel in Chico. I do not remember sending Mr. Hall of the Plumas "National Bulletin" a check for $250 for the publishing of these notices. I have no recollection of Mr. Holbrook sending him a check for $350. I don't remember ever sending a sum of between two and three hundred dollars to Mr. A. A. Hall of the Plumas "Independent" nor of sending it through Mr. Remick.

"Q. Do you remember what you paid Mr. Aid in connection with these locations that he was instrumental in having made?

A. Yes, he received $25 for the locations that he made." [360]

That is $25 apiece for each location. I think there were a few entrymen he had that made their filings and proved up in Marysville. I remember the names of Thomas Atterbury, Tom Hensley, Herman Parker, Van Ornum. I think I advanced Aid the money to pay the Government price of the land in the form of a loan, that is the necessary $400

(Testimony of George E. Tuman.)

to pay the Government in each case. I have no recollection of how the deeds were obtained to those lands. I don't remember getting the deeds personally. I have no recollection as to whether Aid came to me and delivered the deeds to me. I don't remember whether a number of deeds were collected from me at Stillson's office in Chico or not. I don't remember of going to Hall and asking him if he would make out an agreement of publishers. (The witness refers to the agreement of publishers contained in the proof papers of E. E. Ross. Witness fails to identify papers.) I don't recall ever seeing Hall or knowing him personally.

Upon the witness being shown a similar agreement of publishers in the original papers of W. C. Lawrence, he stated that he did not recognize the handwriting, that it was not his own or his wife's or Elam's. It looks a little like J. E. Remick's, but I could not identify it as being Remick's. I don't think it is Heppe's. I would not be certain. I am familiar with lands in Plumas County. I don't know of any scrip lands that were laid in Plumas County in the name of G. Howard Thompson other than the lands that the Curtis, Collins & Holbrook Co. got. [361] I do not know Mr. Thompson. I remember that there were lands taken up by George Kennie, Miles Tanner and George Tanner and Sam Sealight in Plumas County. We purchased those claims, and we sold them to the company and got $10 an acre for them, and we also sold the Wheelock, Branley and the W. C. Lawrence lands to the com

(Testimony of George E. Tuman.)

pany and got our pay for them.

"Mr. PIER.—They were cancelled entries."

Q. Did you ever hear that the Government had laid charges against any of these claims?

Mr. SHURTLEFF.—I object to that upon the ground it is immaterial, irrelevant and incompetent. Suppose he had. It was after he had parted with his title.

Mr. PIER.—We will find out when it was.

Mr. SHURTLEFF.—It must have been because he deeded.

The MASTER.—That is so; I sustain the objection. You can take your testimony.

"A. I did somewhere, some time."

I may have discussed that matter with Mr. Holbrook. I don't recall discussing it with any other member of the company. I don't remember that I discussed it with Mr. Holbrook. I discussed it with Mr. Shurtleff. I am not sure whether it was before or after the entries were canceled. I am inclined to think it was before. I don't know whether Mr. Holbrook was still with the corporation at the time I discussed it with him or not, because I don't know when these entries were canceled, but I do know that Mr. Holbrook retired from the company in February, 1905. I knew that charges against the claims were made before the entries were actually canceled. (From the records witness was informed of the various records canceled, that is, Maggie Branley, canceled September 13, 1906, Mellie Trealeaven, canceled September 13, 1906, Nellie Branley, June 3,

(Testimony of George E. Tuman.)

1908, Marietta Branley, October 1, 1906.)

"Q. Now did you have any knowledge before these were canceled, that is in 1906, that there were charges against them?

A. I think I had heard it indirectly some way. [362]

I think at some time I had talked with Mr. Holbrook about it and also with Mr. Shurtleff. Mr. Curtis and Mr. Collins were not notified that these entries were canceled. I think that at some time the Collinses got to know of the cancellations but I don't know anything about the circumstances. For instance, I think that they know it now and have known it for some time but I don't know when or how they were told. I don't remember advising them myself. I think they knew of it at the time these suits were filed. I consulted with Mr. Holbrook some about the charges of fraud being made against these entries. I did not take any steps to contest the charges at all. Mr. Holbrook was not present at the talk I had with Mr. Shurtleff. I cannot fix the dates of these talks with Mr. Shurtleff. These talks were probably both before and after the fire. I cannot state that the conversation was as to any specific entry. It was on the bunch of them that were held for cancellation in general. I have no personal knowledge that the Miles Tanner claim had been cancelled, nor the George Kennie entry, nor the Sam Seelight.

Mr. Pier, at Mr. Shurtleff's request, stated that the George Kennie entry was cancelled June 22,

(Testimony of George E. Tuman.)

1906, the George Tanner entry March 30, 1910, Miles Tanner, Aug. 10, 1908, Sam Seelight, Oct. 13, 1909. I had heard somewhere indirectly that charges were made against the entry of Sam Seelight. I don't remember ever having taken any occasion to have the interest of the Curtis, Collins & Holbrook Co. or of Charles E. Gregory entered at the land office to show our interest in the land. I think directly or indirectly I loaned George Kennie money to take up the land and the same way with Miles Tanner and George Tanner and Sam Seelight. I can say that I cruised all the lands [363] that the Bramleys took up in this way that I cruised all the land that the company purchased. I don't know what lands the Bramleys actually took up. My records were all destroyed in the fire and I could not give the amount of timber that was on any claim now. I remember Tom Baker. I think he filed on some land. I don't know whether he proved up or not. I might have loaned him some money to prove up. I don't remember. I don't remember the circumstances of paying J. D. Baker for the various claims of himself, his wife and his daughters, although I know as a general fact he was paid for their land. I could not tell you whether I paid Tom Baker $100 for his land without getting it. I don't remember handing J. D. Baker the money to pay for Tom's land. I don't know how much I gave Baker; I don't know whether the Collinses knew of the charges of fraud against these entries before Holbrook's death or not. I remem-

(Testimony of George E. Tuman.)

ber the circumstances of Mr. Holbrook's leaving the company. The relationship between him and Collins was not so cordial as it had been. One of the causes of the lack of cordiality between them was Mr. Holbrook's attempt to form a company of the other stockholders in the company to dispose of the controlling interest as against Mr. Collins to an outside party, T. B. Walker. Holbrook hoped to get all of the remaining interests besides Mr. Collins', that is the Curtis, his own and my interests. When the matter became known Collins naturally felt vexed about it so that the relations were not quite so cordial as they had been—that is the way I prefer to put it. I think at the outset there was an understanding whether it was in words or not, I am unable to say, that the Curtises and Collinses were always to give the other [364] the advantage of buying the stock should they sell to outside parties. I have quite a distinct impression that there was such a general understanding somewhere between the Curtises, Collinses and Holbrook. The cause of Mr. Curtis leaving the company was a disagreement between the Collinses and Mr. Curtis. It came up in connection with some personal feeling over another company in which they were interested. That was the Bayside Lumber Co. Collins felt that he had not been quite properly treated in the Bayside and that raised a little disagreement between the two parties.

"Q. What was this treatment that he had been given that he thought he had not been treated fair?"

(Testimony of George E. Tuman.)

Mr. SHURTLEFF.—We object to that, your Honor; is he going into all these collateral matters, so that we will have to bring out Mr. Collins and Mr. Curtis again.

Mr. PIER.—For the purpose of understanding this deal in which Mr. Collins is disappointed in the Curtises I expect to show that this deal is a similar one to that involved in the Curtis, Collins & Holbrook Co., the contracts are practically the same, and I want to get Mr. Collins' own knowledge about such a transaction. In the Bayside, Mr. D. G. Curtis, as I understand it, enters into a contract which was very similar to that which Collins entered into here and that Mr. Collins brands this action as either that of a fool or a scoundrel, that is what led to the disagreement, and if Mr. Collins wanted to brand that kind of action in that way we can turn around and use his own application to his own cases as to what he was himself.

The MASTER.—I sustain the objection.

Mr. PIER.—It would bear on the issue of fraud, that he goes on the stand and he purports to be absolutely free, open and above board. I want to show that under [365] his own way of dealing that he as a matter of fact is not free, open and aboveboard.

The MASTER.—The objection is sustained.

There was some timber land on Stover Mountain which was located by scrip in 1901. Before the scrip was located I was interested in having a number of cabins built on Stover Mountain and fur-

(Testimony of George E. Tuman.)

nished the money for that. It was not Curtis, Collins and Holbrook money, it was my own personal money. I am not certain whether Holbrook was interested in that or not. I think my original reason for that was to get a settlement in there for the purpose of getting a survey, that is, to have homesteaders settle there and secure a survey.

"Q. Did you get any homesteaders to go up there? (Stover Mountain.)

A. I suggested to three or four different men to settle on some of those lands there; they were unsurveyed at this time, on this particular tract—I presume you know what I am leading up to, and at least two of them acted upon my suggestion."

"Q. What was your reason for resorting to the timber and stone applicants and trying to get the land located by timber and stone applicants rather than taking the scrip method of getting the land?

A. We could not get scrip."

So I was informed by Mr. Holbrook. I discussed with Mr. Holbrook the advisability of letting our operations be known to the extent that it would induce entries to be made with the expectation of buying them later; I discussed the advisability of doing that with him, and later determined to take up that land.

"Q. You actually took up the work of getting the land in that way, that is you did? [366]

A. Yes.

Q. At various times in talking with you, Mr. Tuman, did you before make this statement, that was

(Testimony of George E. Tuman.)

the generally accepted way of getting timber and stone land in that part of the country?"

Mr. SHURTLEFF.—Talking with who?

Mr. PIER.—That the method pursued by you was the generally accepted way of getting timber and stone land, that was the only way in which you could get timber land if you could not get scrip.

A. There are only two ways that I know of of getting timber land, one is by the application of scrip in some form or the purchase of timber and stone claims; there are some homestead claims that contain timber to such an extent that they are more valuable for the timber than for any other purpose; occasionally a homestead claim may be; but there seems to be no other way of acquiring lands except by scrip and by timber and stone claims.

Q. Suppose there were no timber and stone settlements made, what is left open to you?

A. Only scrip.

Q. Or to induce people to locate on the land so that you can buy it?

A. Yes, I think that is correct—by the word 'inducing' I suppose you mean the method we pursued of letting it be known that we were in the market for timber lands.

Q. Were there any others operating in that same way up in that community?

Mr. SHURTLEFF.—That is objected to as immaterial, incompetent and irrelevant.

The MASTER.—The objection is sustained."

[367]

(Testimony of George E. Tuman.)

Mr. Pier, at Mr. Shurtleff's request, stated that the records showed that Orlando A. Wheelock's entry was canceled on the 29th of April, 1908, Michael Bramley's on the 9th of July, 1906, and Laura M. Wheelock's on the 29th of April, 1908.

Mr. Holbrook, Sr., never notified me of the receipt by him of any notice from the Government that they were seeking to cancel any of these entries which have been referred to as cancelled entries upon the ground of fraud. My recollection is that I discussed with you personally these cancelled entries prior to the fire. It must have been in your office at 120 Sutter Street.

"Q. The fire occurred in April, 1906, and these cancellations were all subsequent to that date?

A. I don't know; I am quite sure I received information in some way or another about action in the matter."

I cannot say to what extent we went into the matter of the facts of any of these cancelled entries at any of the times only that these actions were taken or being taken. I don't know that any specific entry was discussed. It seems to me all I can recall is that we discussed in general some of these cancellations or prospective cancellations. I could not say that anyone else was present.

"Q. Isn't it a fact that the first discussion that you ever had with me occurred when I was on Montgomery Street some time in 1908 just before I moved to the Foxcroft Building?

A. I had the thought that we had had some be-

(Testimony of George E. Tuman.)

fore the fire, but of course I might have been mistaken, but I thought so.

Q. You were called upon to check the lands of the [368] Curtis, Collins and Holbrook Company for the purpose of assessment, were you not?

A. Yes.

Q. Was it not then that you indicated that some of the lands had been lost to the company by reason of the entries being cancelled?

A. I think that I called your attention to it at that time.

Q. Did you call my attention or the attention of Mrs. O'Farrel, who was then Miss Williams?

A. Either one, I don't know which now. I don't remember whether I discussed with you specifically the cancellation of George Tanner's entry. It seems to me it was more a discussion of the cancellations that were being made or about to be made rather than anyone. It is my recollection that I had more than one general discussion with you. I don't remember ever having taken up the discussion of the facts of any specific entry of these entries that have been canceled here. Only in a general way. I never told you that I or Mr. Holbrook had ever secured any of these people to take up that land. I remember that it was rumored at one time that the United States Grand Jury was investigating the taking up of these timber lands. I think it was shortly after the fire, within a year. I though it was a little before 1908. I have no direct recollection of the time.

(Testimony of George E. Tuman.)

"Q. Don't you remember I introduced the conversation to you the first time that these entries were ever discussed with me and that I stated to you that Mr. Holbrook had said—not over three or four as I recall—were being contested in the General Land Office upon the ground of fraud, and that I asked you about it?

A. That might have been where I first got my [369] information, I am not able to say, I am unable to say."

I remember there was a conversation similar to that but just when it was or where it was I could not say. I always maintained that there was nothing wrong with these entries to my knowledge.

"Q. Now, you seem to be of the impression, Mr. Tuman, that you had a conversation with me about these entries prior to the fire. If you know anything about such conversation what is it that gives you that impression?

A. Only this, that I think I learned or heard in some way about these cancelled cases shortly before the fire. I don't know where I got the information or how—I can't recall any of the incidents of discussing it with you in the old Sutter Street office, yet I felt as though it has been done."

I don't recall discussing it with you when you had your office at home. I have no recollection of ever having called to your attention this list of cancelled entries that have been shown here by the Government. Until it was brought out to-day I had forgotten about the Tanners and the Kennies and See-

(Testimony of George E. Tuman.)

light's cancellations. The only ones I remembered were the Bramleys and the Wheelocks. I didn't know for certain that Molly Treleaven was a Bramley. I never discussed these with Mr. F. S. Collins very much, and then only a short time ago, that is, comparatively speaking. I don't think I took them up with him prior to the dates of the cancellations. I never took them up with T. D. Collins or Irving F. Moulton, D. G. Curtis or J. G. Curtis. I did discuss it with Mr. Holbrook who was not at that time connected with the company. I don't think I was ever present at a discussion of this matter where Mr. Shurtleff, Mr. Holbrook and myself were present. Mr. Holbrook died in 1909. I don't remember [370] when I last checked the Curtis, Collins and Holbrook lands for the purpose of determining what lands were properly assessed to the company. I have no independent recollection of ever discussing any one of the particular entries with you nor of the number that were discussed, at that time. I do not remember of bringing to Mr. Shurtleff any of the papers or notices of any kind in connection with any of the transactions, although there was a notice came into my possession at one time that had evidently been sent to an entryman. I do not remember where I got it nor why I showed it to you or what. I don't remember showing it to you; I remember seeing it myself.

Redirect Examination.

In checking the lands for the purposes of assess-

(Testimony of George E. Tuman.)

ment I found lots of them assessed in the name of Gregory. I don't know whether any were still in the names of the entrymen or not. I don't recall whether John W. Aid's land was assessed to John W. Aid or not. The lands that were of record still in the name of Gregory were assessed to Gregory and I suppose the land would be assessed to the entrymen if it was still in the entryman's name.

"Q. You personally handled the paying of the taxes in all these cases, did you not, covering all of the lands of the Curtis, Collins & Holbrook Company after the fire?

A. Part of them.

Q. That is all the land in which timber and stone applicants had taken up the land? [371]

A. I would do the checking of them over and see if they were paying on the right land that the company was interested in, but I don't remember the different forms or ways in which it was paid; I could not tell you that."

I checked up from a list of the lands, the company was supposed to have which I had. I could pretty nearly remember most of them. I had a record of the lands that the company had bought and had them on plats and on a map. I relied on that rather than on the county records in checking up for the purposes of assessment. I do not think that we ever went to the county records. When it came to paying the taxes on the entrymen's lands and Gregory's lands I would send to the tax collector a list of the lands on which we wished to pay

(Testimony of George E. Tuman.)

taxes and would secure from him the assessment list and remit the money to him with instructions to apply it on these lands. When I discussed with Mr. Holbrook about the charges of fraud against these lands, and what procedure we should take and what the company should do in regard to the lands, Mr. Holbrook's attitude in that regard was that he wished that nothing be done about it. He didn't tell me why. He put it in this way, that the company had got these lands at a price that was—well, that they had got valuable lands for a comparatively cheap price and that they were only a few of these claims that were liable for cancellation, the balance were patented, and said they could well afford to lose two or three pieces; that was all I remember at the time that we were talking about, and he though we had better leave it rest right there and advised against it; other than that I don't know as he gave any reason. That is practically all that he said. I think that was after [372] he had retired from the company. Whether it was before or after the San Francisco fire I am unable to say. I do not remember discussing with him when the statute of limitations would run so as to make these patents substantial although we both knew about the statute of limitations on that, that is, we understood at the time that the patents would be solid in six years.

Mr. SHURTLEFF.—You knew that it was against the law to enter into a contract to purchase timber and stone lands from the entryman?

(Testimony of George E. Tuman.)

A. Yes.

Q. But there was a point of time at which you could make that contract. What was your understanding as to that?

A. We were under the impression that it would be against the law to have a contract or any form of agreement until they had made final proof. I took a claim myself. The company got that. We got some forest lieu scrip land in the name of Charles H. Holbrook, Jr. The land taken in the name of C. H. Holbrook, Jr., was turned over to the Curtis, Collins & Holbrook Co. The original contract was a little elastic. It was supposed to provide for a certain number of acres and yet that was considered a minimum.

Testimony of George E. Tuman, for Defendants.

GEO. E. TUMAN, called for the defense.

In assembling the lands involved in these different suits and in showing the lands to the different locators I was assisted by J. H. Heppe, J. E. Remick, John W. Aid, and Alexander Cameron. I do not think of any others just now. Mr. [373] Elam assisted me as a compassman and in the beginning Mr. Golden helped me to examine some of the lands.

"Q. Did you have any conversation with these different persons prior to their entering upon the work of showing these lands and assisting you; did you give them any instructions?

A. Yes, I had conversation with them."

(Testimony of George E. Tuman.)

I told them I would like to see entries made in that district. I think their reply was that they had friends who would be glad to locate on the lands. I had conversations with them as to the procedure they would follow with the entrymen. That conversation would take something like this form: That I wished if their friends made entries on these lands they would do so legally; that is that it would be in such shape that we could not be involved in any way. I had conversations in reference to making of agreements.

"Q. With the entrymen?

A. That is what I meant in saying not be involved in any way. I knew that agreements could not be made prior to location."

I had discussions with these different men on that point, that they should not make an agreement in any form whatever. I do not recall personally ever advancing any expense moneys for any of these locators.

"Q. (The MASTER.) What do you mean by expense moneys?

Mr. SHURTLEFF.—I was going to elaborate on that a little, money to be used by them in defraying their expenses in going out and looking at the land, whatever expense they would be to on journeys which they might be [374] required to make to Susanville or to Quincy, whether you personally ever did?

A. No, not that I can recall. At various times I advanced moneys in lump sums to those parties

(Testimony of George E. Tuman.)

who were assisting me in showing these locators land.

"Q. Did any instructions from you accompany these advancements?

A. I think not, only that it was advanced; they would apply for moneys for their purposes and I would advance it. I think no instructions accompanied them in particular; not to my recollection now.

"Q. 'For their purposes,' what do you mean by that?

A. They said they needed money for their use and I would advance them lump sums of money.

Q. Was there any thing said by you to any of these people regarding the taking of notes or receipts for moneys that they might alvance to any locators? A. Yes.

Q. What was that? A. To take notes."

I had received no legal advice personally as to taking up these lands prior to entering upon this undertaking and neither had Mr. Holbrook, to my knowledge. I had discussed these different things with Mr. Holbrook prior to doing anything in connection with these claims. He was familiar with the method that I would pursue in the field. I never authorized Jack Heppe to make any agreement with the locators that I or someone I represented would buy the land after they had completed their locations. I never instructed J. E. Remick or John W. Aid or Alexander Cameron to enter into contracts by the terms of which they would

(Testimony of George E. Tuman.)

agree to buy the land of the locators [375] after their locations were made. I had no knowledge at any time that any of these persons just named were making such representations to entrymen. The Curtis, Collins & Holbrook Co. have employed Jack Heppe. I think he first entered the employ of the company, about 1904, that is just a guess. I employed him for the company. I was not a director at the time. I think that had better be put, I recommended his employment to the company. I think Mr. Holbrook negotiated the terms. He left the company's employ after a time. I cannot fix the date, about 1906 or '07. J. E. Remick succeeded him as caretaker. There were several months intervening between the two employments, Mr. Heppe was only employed once by the company. His duties were to guard the land, forest ranger—what we called forester, to look after fire and trespassers, acting in conjunction to a certain extent with the Forest Service of the Government in that vicinity. In paying for these lands, I did not personally ever use any Curtis, Collins & Holbrook checks. Most of them were paid for in coin. The coin was Holbrook's and mine. I think it nearly all came from Mr. Holbrook, for he was custodian of the joint funds. There was money on deposit in the Bank of Lassen County in Susanville to which I had access and which I used in payment for the lands. The money was placed in the bank by Mr. Holbrook with instructions to pay to my order. I think I had a private account also, but that was

(Testimony of George E. Tuman.)

separate from this one.

"Q. Did you ever use any checks in paying for these lands involved in these different suits signed 'Holbrook and Company'?"

Mr. PIER.—I object to that as not the best evidence.

The MASTER.—I will overrule the objection.

A. I did not. [376]

Q. Mr. Tuman, have you ever signed any checks purporting to be the checks of the Curtis, Collins and Holbrook Co.? A. No, sir.

Q. Have you ever had any authority to sign any instrument of any kind or character for the payment of money using the name of or by the Curtis, Collins & Holbrook Company?

A. No, never at any time. I don't know whether C. H. Holbrook had a personal account with the Lassen County Bank or not. If you mean this account, in a way I presume this account was carried in the name of G. H. Holbrook, but whether he had any other account or not I don't know. I signed checks on that bank in my own name, not Mr. Holbrook's or any other. When I signed those orders I had a small account of my own, a personal one, I think I had at any rate, but I don't recall how I fixed these other orders or checks. It was drawn against the money we put there so as not to conflict with my own account. I don't recall how that was done now. Of course, I had one or two or more conversations with Jack Heppe and probably had indicated to me about the price I would

(Testimony of George E. Tuman.)

hope to buy the lands for or wished to buy the lands for. I don't think that I ever told them that I was acquiring them for any particular company.

"Q. Did you ever state to any of them that you were acquiring them for the Curtis, Collins & Holbrook Company?

A. No. I think there were some entries made by locators who came in without any encouragement and made entries in the [377] region where I was cruising. I don't recall any now, but I think I could by thinking it over a little while. The average cost of taking up a timber and stone entry of 160 acres would be about $460 or $470. That would be $400 to the Government, about $19 for advertising; there was a testimony fee usually of $10 or $11; there was the expense of two trips to the Land Office, which would necessarily include, on the second trip, two witnesses, which would average from people living in the district of Susanville which is a one day's ride, one day in the land office or in town, and one day in return; they would pay for a team about $4 a day, which would be $12 a team for each of the trips, or $24 for the two trips. Their expenses would be probably about $2 for each one per day. That was helped a little in many cases by letting three or four go together; I suppose it would not cost them as much.

"Q. Well, $25 would be an approximate figure?

A. That is somewhere near it. It ran from $450 to $470, I figured, about the cost of the claim."

There was also a locator's fee of $25.

(Testimony of George E. Tuman.)

Q. Then, there is in addition to that $100 which can be assumed to be the locator's profit, making approximately $574?

Mr. SHURTLEFF.—Q. Did D. G. Curtis, or J. G. Curtis or E. S. Collins or T. D. Collins, or the Curtis, Collins & Holbrook Company or any other person or persons outside of C. H. Holbrook place any moneys either in the bank or elsewhere which were made accessible to you and to be used in acquiring and paying for these lands in purchasing them from the entrymen, advancing money to them which you say you did advance or in paying the expenses? [378] A. They did not.

Q. I understand that during the time these lands were being assembled you did not meet Mr. T. D. Collins or Mr. E. S. Collins or Mr. D. G. Curtis or Mr. J. G. Curtis?

A. Well, I think that is not just as I put it because it was in the Fall of 1902 that I first met these gentlemen and we had not acquired and sold to the company all of these timber and stone claims at that time yet, although they were in the course of sale A majority of the entries had been made anyway. I don't know whether they all had or not, but I think they all or nearly all had been made, yes. At that time I think my personal connection with Mr. Holbrook in the deal had been disclosed to them. Mr. T. D. Collins may have learned the extent of my interest with Mr. Holbrook for the first time when I brought my suit against Mr. Holbrook, but he knew I was inter-

(Testimony of George E. Tuman.)

ested. I made it known to these gentlemen that I was interested in some way the first time I met them. Not to my knowledge did I tell John W. Aid that I was representing the Curtis, Collins & Holbrook Co. I cannot recall it now. I could not have told him that I represented the company for I had no right to do so. The only possible way that I can think of that it might have been mentioned was that we were selling land to a company. I could not have used the word represented for I had no right to do so. I could not say of my own knowledge as to whether the ten per cent subscription to the stock of the Curtis, Collins & Holbrook Co. was in writing or not. I suppose naturally the two contracts, Defendants' Exhibit "A" and "B" would agree upon the point of the amount of [379] stock that we were to have in the company if it was contained in the contract. I do not know of any contract outside of these relating to the proposition of stock that Mr. Holbrook was to receive. Other persons besides those who actually located the land approached me relative to making locations under the Timber and Stone Act that I refused to assist in making locations. The principal reason for refusing was that they wanted an agreement beforehand that I would take the land later.

"Q. Are you able to recall now any persons that did that?

A. I think I could recall some.

Q. Can you give the names now?

(Testimony of George E. Tuman.)

A. I could prepare a list of those names later, but just offhand I cannot." I never guaranteed any entryman that I would purchase land after it had been acquired. I am inclined to think that some of those who asked for the guarantee and were refused later took up land.

"Q. Did you ever, so far as your knowledge goes, authorize anyone else to make such agreement?

A. I did not. I negotiated some of the purchases from the entrymen for these lands personally, approximately half, or more.

"Q. Did you when you sought to purchase lands from the entrymen have negotiations with them touching the price that you would pay?

A. On most of them I did.

Q. Of course, in every instance there would have to be some negotiation about the price that you would have to pay, but I mean by that was there any discussion or any dickering back and forth? [380]

A. Yes, there was in most of the cases. I had in mind to pay approximately $600 for a claim, and I tried to keep it at or near that point; I did not always succeed, but tried to. My understanding at that time of the regulations of the Department of the United States statutes are that it was against the rules and regulations to induce an entryman to take up a claim and particularly to make an agreement with him, but my understanding at that time was that it was prior to final proof. I had seen Charles Monroe once at that time. I never talked

(Testimony of George E. Tuman.)

with him prior to his making his entry about acquiring his land. He never talked to me about it. I knew Jacob Aid slightly. I think I negotiated with him for the purchase of the land. I secured his deed. I am inclined to think the transaction took place in Chico. I am not sure if it was in a hotel in Chico; if it was it would be the Park Hotel, but I have not a distinct recollection of the place. I think it was in Chico somewhere. The cloak-room in the Park Hotel is a little dark closet, and I hardly think I would transact business of that kind there. The cloak-room is under the stairway back of the office and lobby.

"Q. What was your manner, how did you conduct your dealings in acquiring these lands? Did you make secret and private appointments with these different purchasers?

"A. No, not that I can ever recall or think of; there was no reason for it; most of the time it was transacted in the presence of a notary before whom the deed was executed or put in escrow somewhere, the deed put in escrow and the money left somewhere."

I have no recollection of ever conducting these negotiations in surreptitious, secret and dark places. I know of no reason why I should do it that way. I am referring to the final purchase and not the advance of the $400 to pay for the land. As regards those loans to these different entrymen, a great many of them were made at the Hotel Emerson in Susanville. These loans were usually made

(Testimony of George E. Tuman.)

in a room. The coin was given and a note taken. I would think that a room where only the parties concerned would be, would be better than a crowded lobby of a hotel. [381]

Mr. PIER.—"Q. That is your thought at the present time, is that idea? A. Yes."

Mr. SHURTLEFF.—"Q. At that time, Mr. Tuman, what was your object in going in a room, so that you could not be seen in public, so that the public could not see you or Special Agents could not see you?

A. No, not that, but if a man had one or two thousand dollars in money perhaps, it seems to me very much better to; I would do it now or any other time if I had business to transact with a man, I would go to a room where we would be by ourselves."

I remember I loaned either directly or indirectly approximately to every entryman who took up a claim. I did not make any statement to those persons to whom I loaned the money not to mention it or say anything about it, there was no cause for that.

"Q. Did you ever instruct any of these men that were making these loans for you or by your consent to ask these gentlemen not to mention it?

A. Well, now, I can't strictly say whether I had or had not. Usually in my business that I have conducted I think that it is only the business between myself and the men that I am with. I don't think that anybody else has a right to know about

(Testimony of George E. Tuman.)

it, and I never talked much about my business to anybody. A number of the notes taken ran to Lewis. Lewis did not handle any of the money himself. The purpose of taking the notes in the name of Lewis was that Lewis was a personal friend of C. H. Holbrook, and I don't know whether it was at Holbrook's request that they were taken in Lewis' name or not. I know Mr. Lewis myself quite well. I don't [382] think I made any representations as to whom I was buying the land for or whom I represented. I think that there were hardly any of the entrymen or claim owners knew to whom the lands were going or to whom the lands were to be deeded. I don't think they cared at all until they saw the deed. Mr. Holbrook and I were not endeavoring in any way to suppress or keep quiet the fact that we were personally assembling these lands. I didn't care about it or say anything about it, and we certainly made no representations about it to anybody. I don't think that anything was said about the reasons for making the title in the name of Mr. Gregory. I cannot recall now why we took notes in the names of others instead of my name. As I said, most of them were taken in the name of S. E. Lewis, but other than the reason that he was a friend of both Mr. Holbrook and myself I cannot give any reason why. I have no recollection of advancing money to John W. Aid with which to defray his expenses in going to examine the land he filed on. I don't think I ever saw Aid at all after he had made a

(Testimony of George E. Tuman.)

filing on his own claim. After he made his own location, I think it was on his return from Susanville, to Prattville, he looked me up and said he had a number of friends in Chico who he was sure would like to take claims and he said he had heard that men were getting a fee or could get a fee for locating lands in the subsequent sale and said he would like to do that. I told him I did not care, it was all right. He could locate all he wished. I don't think the Curtis, Collins & Holbrook Co. ever employed John W. Aid. I am sure they did not. I met Elijah Taylor once. I never employed him in any way in connection with the acquiring of these lands, nor did I ever authorize him to act for me or to make any statement concerning it. I never authorized him to say to anybody [383] that if they wanted to enter on or take up lands the expenses would be paid. Mr. Holbrook had nothing to do with the field work of locating and pointing out the lands, etc., and the acquiring of them; from time to time I would discuss the matter with him. I think I gave money to John W. Aid personally to be used in connection with his entry in making his final proof. I have been cruising land since 1896; I have done considerable cruising and have cruised several hundred thousand acres.

"Q. When you were on the stand before you said in answer to this question: "Did the Curtis, Collins & Holbrook Company get all their lands from you and Mr. Holbrook?"

A. You mean, did they buy all of their lands

(Testimony of George E. Tuman.)

through Mr. Holbrook and myself?

Q. Yes. A. Yes.

Q. That is you cruised all the lands and selected all of the lands which the company subsequently purchased?

A. All of it, yes. That is, with the help of Mr. Golden and Mr. Elam.

Q. I mean it was under your and Mr. Holbrook's supervision and direction and control? A. Yes.

Q. Did you, or did you not, wish to be understood by that testimony that you were acquiring the lands at this time that you speak of for the Curtis, Collins & Holbrook Company and that that company was acquiring them under the direction of yourself and Mr. Holbrook?

A. That is not quite clear."

Mr. PIER.—I object to that question as not the proper way of developing the facts, and furthermore that [384] it is leading.

The MASTER.—I will overrule the objection.

A. No, not just as you seem to mean, in using the word "acquiring"—acquiring it for the purpose of selling it to the Curtis, Collins & Holbrook Company at an agreed price.

Q. Were you selling it to the Curtis, Collins & Hilbrook Company?

A. Yes,—acquiring it for the purpose of selling it to them, to the Curtis, Collins & Holbrook Company.

Q. Who was your contract with?

A. We were acting under the contract of Mr.

(Testimony of George E. Tuman.)

Holbrook, Mr. Collins and Mr. Curtis.

Q. Who would you sell the lands to under the contract?

A. To them or a company formed by them which subsequently became the Curtis, Collins & Holbrook Company.

Q. Who were the purchasers from you and Mr. Holbrook of these particular lands, who bought them?

A. The Curtis, Collins & Holbrook Company.

Q. Did the Curtis, Collins & Holbrook Company buy them?

A. I don't know who would buy them—the company I know was not organized at that time that the first lands were being obtained, I don't know just how you would put it, if the company was not organized Mr. Curtis and Mr. Collins were furnishing the money to make the purchases of the land and the scrip was carried in the name of G. Howard Thompson; the timber and stone claims were carried for awhile in the name of Gregory, but bought and paid for with money furnished by Mr. Collins and Mr. Curtis.

The MASTER.—I thought that that money came from them originally, but it was Mr. Holbrook's and your money that bought that land.

A. It was in selling it to the company.

Q. I mean selling it at your price?

A. Selling it to the company."

To make that answer clear I had better add to it that the first money that we received was on the

(Testimony of George E. Tuman.)

scrip land [385] and with that money we made the initial purchases of the timber and stone claims. When we received the money for the different timber and stone claims we turned it into the purchase of others. I did not know that Jack Heppe was permitting some people to file on lands, as for instance Reuben J. Mitchell, without their seeing them. Mr. Holbrook would have no opportunity to know, being in the city of San Francisco. I did not know that Mr. Heppe gave any of the witnesses directions as to how they should testify or what they should say in making their final proof. I suppose that was left to the entrymen to explain as to the sources from which they received their money to make final proof. I had nothing to do with them. I was not aware prior to purchasing the lands that Heppe had practically directed them to make false answers to some of their questions. I have never met Reuben J. Mitchell so far as I know. I never went into a saloon in Susanville or any other place or building and there represented a man to be Reuben J. Mitchell or whom I thought was Reuben J. Mitchell.

"Q. Do you remember any such circumstances as this? I am reading from Mr. Reuben J. Mitchell's testimony: 'I think I was playing cards with some people, or a game of billiards, I don't know which, and he says, "Your name is Mitchell," and I said, "Yes," He says, "I would like to see you a minute." We went over to the corner of the saloon and he handed me, he says, "I was told I think by my friend

(Testimony of George E. Tuman.)

Gardenshire, to hand you that slip of paper." So I tried to get a little information from him and he seemed to be in a great hurry, he would not talk with me at all, would not answer me, just talked about Mr. Gardenshire, and said he did not know anything about this, and said, "You will excuse [386] me, I am in a great hurry," and he flew right out.'

"Q. Did he tell you what his name was?

"A. I think he introduced himself when he came to me as Tuman.

"Q. He said his name was Tuman?

"A. I ain't sure whether he did introduce himself to me, or whether I asked someone else in the room after he went out if they knew what his name was, and I think I was told his name was Tuman, or he might have introduced himself Tuman. It is a long time ago and I don't remember.

"Q. Do you remember of any such incident as that?

"A. I do not. If that circumstance had ever occurred I think I would have remembered it. During the last three or four years I have had some financial reverses. That was in June, 1911. Prior to that time I had no financial reverses. I never represented to any of these entrymen and I had no occasion to offer them any excuses for not meeting payments, that I had had reverses, that I was hard up and could not get the money or anything of that kind. I never told Edward Brase that I had financial reverses.

(Testimony of George E. Tuman.)

"Q. Did you ever pay any of these different locators for their lands prior to their making their final proof? "A. Do you mean did I pay them?

"Q. For their lands, negotiate the purchase to buy their land and pay for them?

"A. I did not because I thought that would be contrary to law. I don't think I ever met Gretie Terrell. I did not pay her for her land prior to making final proof. In addition to the two Ratchfords, L. W. Bunnell came to me before taking up the land and wanted me to provide a guarantee to take it off his hands. He ran a hotel, where I stayed, known as the Bunnell Hotel. He knew in a general way what we were doing and he went so far as to state that he thought he would not want to bother with the matter for less than $250 clear to himself and of course I was not in the business of making any such assurances to anybody, so nothing came of the talk. There was also L. A. Bunnell, his nephew. He [387] wanted a definite idea as to the price he would get in the event he took up a claim. I told these different people I could not make any assurances. There was also a man by the name of Barnes and one named Carter. I think L. A. Bunnell subsequently took up a claim but I did not purchase that. I do not know as any of the others took up a claim.

"Q. Have you thought of any people that took up land without any species of encouragement or having been talked to by your men?

A. I have thought of a few. In that district there was a claim taken up by Mrs. Head, one by Victor

(Testimony of George E. Tuman.)

Barber, one by a man named Jenkins, and Russell; I have thought of those.

Q. All of those were in the land you cruised?

A. Yes, Mrs. Head was, also the claim that Barber took up; I think I made a cruise of the other two, Jenkins and Russells."

The company did not get those lands. I was instrumental in acquiring Mrs. Head's claim by Walker, that is, I bought the land for Walker from Mrs. Head. I know C. E. Emerson. He took up a claim but I had nothing to do with it. I know Nellie Stover. She took up a claim which I bought and which the Curtis, Collins & Holbrook Co. finally got. Victor Barber located her. I had nothing to do with it.

"Q. Was he acting under your instructions or with you in any way?

A. Yes, I think you might say that he was. We were friendly—yes, you might say we were working together in there."

The Curtis, Collins & Holbrook Co. did not get Victor Barber's claim. Victor Barber had nothing to do with [388] any of the claims acquired by the Curtis, Collins & Holbrook Co., except two or three of which Nellie Stover's was one. None of the Victor Barber claims are involved in this litigation. Prior to this time the general rumor was that the profit that was made by the entryman in taking up timber and stone entries was $75 a claim. There was a very well-defined rumor to that effect in Plumas County at that time. Some of the entrymen came

(Testimony of George E. Tuman.)

to me for the purpose of selling their land to me. In other cases I went to them. I don't think I could pick them out unless they were named as to which ones I went to but I think the majority of them I went and saw. There were a few came to me. I would have to make out a list and think each one over and try to recall the circumstances to tell which way it was. I did not give any instructions to the different people who negotiated the loans to entrymen touching the suppression of information concerning them. I was not endeavoring to keep the matter secret or quiet in any way. I am sure I did not promise John W. Aid to lend him money with which to pay for his land before he filed on the land because I did not see him until after he had made his entry. I never met John L. Gray nor Chas. Butler prior to the time that the money was loaned to them. I remember seeing Mr. Holbrook, Sr., talking to D. G. Curtis, J. G. Curtis, E. S. Collins and T. D. Collins in reference to the scarcity of scrip, that he could not get it during that summer and spring. I don't remember to whom he was addressing that conversation. As I recall it was when these people had come from the east on their first trip of inspection in the fall of 1902 and we were at the Bunnell Hotel for a day or two and out in the woods three or four days [389] and it was during that trip. I cannot tell how or when, it was more than that. I recall distinctly that Mr. Holbrook assured them that the timber and stone claims were all right, just as good as the scrip. So

(Testimony of George E. Tuman.)

far as I recall the conversation it was that the claims were being bought and that the titles were already in existence and were being purchased. They would not be, from what he said unless they had taken it up in an independent way. I think that we paid for the first scrip $4.50; I think about $5 for some still later.

Mr. SHURTLEFF.—Q. At the time that you resorted to the method of acquiring these lands through timber and stone applications, or at the time that these stone and timber entries were made, what was the price of scrip?

A. I think when we started about $4.50."

That would make 160 acres costing approximately $720. There would be no additional cost to amount to anything besides that. I do not remember ever telling Ed Brase that some of the locators were refusing to turn over their land. Jack Heppe made an application to me to send him a ticket from Sisson to San Francisco. That application was by letter. I don't know where the letter is. My impression is that I gave it to you. I don't know whether a ticket was sent him or not. I had nothing to do with providing a ticket. Mrs. Tuman did not send him one that I know of. I knew Willard C. Brown in his lifetime. I may have had a general conversation with him about showing locators land that I would be glad to see locations made. That would be the only authorization that I would have given him. I don't know that I gave him any notes. I know he represented me in purchasing some lands from the

(Testimony of George E. Tuman.)

locators. I could not say which ones. There were several that had their homes [390] around Greenville. I left the money to pay for the lands with Brown in escrow for him to close the transaction for me. These deals I had partially conducted myself. You see I could not start out to see a man with the money in my pocket because I did not know whether I was going to get the claim or not. I would have to arrange with him first. I think I met Jack Heppe first about the latter part of August, 1901, and he took up this matter of these locations sometime in the early spring of 1902.

"Q. Can you give us any information touching the preparation of these different deeds, that is, the deeds of the entrymen, would they be prepared at the time you had the negotiations concluded, or would you go with the deeds prepared?

A. No. Practically all of them, as far as I can recall at any rate, I would have my negotiations with the parties first, and as in the case of these men, whom I spoke of a few minutes ago, those around Greenville, I stated to them to call on Mr. Brown and they would find there a deed to be executed, that is at the close of the negotiations that they would find the deed to be executed and the money in escrew with Mr. Brown; my wife usually made the deeds out. I would send the deed all made out except for the signature to Brown together with the money. Now, that for instance, was the way that I handled most of those in Greenville. In the cases where Elam handled the transaction and the closing of the

(Testimony of George E. Tuman.)

transaction, the negotiations were had first and then the deed would be prepared, usually, as stated by me, by my wife, written out, and the deed and money given to Elam and he would go and see the people."

When others such as Elam and Remick made the negotiations for the purchase of the land, I think, as I recall it, [391] the negotiations were made and I knew before I gave them the money or the deed to have executed what was going to be paid for the lands. I do not think I left it to the discretion of anyone to close the deal. Frank McManus acquired under the Timber and Stone Act 160 acres that I cruised. Jack Heppe showed him the land. I had no conversation with McManus prior to his making his entry. I loaned him money to make his final proof. It was over $400, I think, $425. He later sold the land to Walker. I had negotiations with him touching the purchase of land. He asked too high a price for it. He wanted $1500. I am not so positive about that as I would like to be, but that is my impression as to the price. He never repaid the $400.

"Q. Did you ever have any conversation with him about it? A. Yes.

Q. What did he say?

A. Well, he just would not do anything; he would not pay it back or do anything about the matter.

Q. Did he deny that he owed the money?

A. No.

Q. What was he doing; what was his business at that time? A. School-teacher.

(Testimony of George E. Tuman.)

Q. He was a school-teacher at the time that you talked to him?

A. Yes, teaching school—no, at the time I talked with him about his land I don't know. He had been a school-teacher.

Q. At the time you talked to him about the return of the money? [392]

A. Really I could not tell you what he was doing. He had been a school-teacher, but what he was doing at the time I talked with him about the return of the money, I don't know. I just recall to memory he was studying for some purpose, and his excuse for not returning the money at that time, he said that temptation to use money in his education was too great and he had used it for that purpose and had no money at that time and could not return it. I just remember that. But I forget now what the education was for, along what lines."

The little towns or villages near the lands that were located and covered by these suits are Prattville. Greenville, Taylorville, Crescent Mills and Quincy. Taylorville is nearer to those in T. 25–10, while Prattville is nearer and is almost surrounded by a number of the others.

Witness indicates Henry Clay White's location on Government Exhibit 80, and describes it as being in Section 30–24–9. It is about 120 acres. The land involved in this litigation lies north northeast and northwest of Henry White's claim.

Q. Is the slope of the country towards the lands

(Testimony of George E. Tuman.)

of the Curtis, Collins & Holbrook Company or does it slope away from it?

A. This is on the branch of Rock Creek, this White claim; The Rock Creek heads back in here somewhere and slopes. Rock Creek slopes—the point where White's claim is slopes to the Northwest into Spanish Creek and Spanish Creek then runs Northerly or perhaps a little north to a point about here, and this land slopes in this way into Spanish Creek.

Q. By saying that land in there, can't you give that a little more definitely? [393]

A. I could trace it better on the map than I could by giving a description of it. The slope of the ground from the White claim to here is this way and then this way, and then the creek runs down towards this way, there is a little slope in there; the same watershed.

Q. It is impossible to get it into the record like that. Can you describe it from the map so that we can get it into the record.

A. Any contour map of the district will show it.

The MASTER.—Q. What did you take that up for?

Mr. SHURTLEFF.—Q. Yes, what did you take that up for?

A. For the timber, it was good timber.

The MASTER.—It was isolated away out there, away from the rest of it.

Mr. SHURTLEFF.—Q. Had you taken up any land around it?

(Testimony of George E. Tuman.)

A. There was some more land being taken up in there.

Q. By people with location numbers furnished by you or somebody else? A. Yes.

Q. What become of them?

A. They were lost or canceled in the suit."

Those lands were contested for being mineral and the contest sustained. I think there were some fifteen or more of them. The lands back of the Henry Clay White claim were taken up by J. M. Ingal, scrip location. We did not have in view that the Henry Clay White entry would bottle up that country so that no other timber purchasers would go there to look for land but this much might be said about the particular location of White's claim, that the [394] most economical and practical roadway for a railroad to the country above would necessarily pass over White's land, but I would not think there would be any thought of that. I did not have that in view at the time of taking up the land, the timber was the only thing I had in view at the time I purchased. The claims that were contested for being therefore comprised all the southeast part of 24–8, therefore adjoining a section of White's claim. I am not sure but what White's claim was originally 160 acres and one forty ran over into another township. None of the contested claims were in White's township. Mr. Holbrook and I had never discussed the advisability of taking up the White claim in order to control the outlet of that country. I had no discussion with White relative to the taking up

(Testimony of George E. Tuman.)

of his claim prior to the time he filed on it. After he made his location he approached me and discussed with me whether I would guarantee to purchase his claim and I refused to do it. I had extensive negotiations with him to purchase it and had to see him at least a second time. At some point he wanted a higher price than I was willing to pay. He did not make any statement that this controlled the situation for a railroad. I did not speak to Remick or Elam or any of the other locators as regards furnishing proof witnesses. I suppose that the entrymen would arrange that themselves. I don't think Mr. Remick or Mr. Heppe ever cruised any of the lands involved in this litigation. Their labors were concerned only in taking locators out and pointing out the lands and showing them the corners which service they were to perform for this $25. In doing this work it was not necessary to do any surveying or anything of that kind. Some of the land that we cruised was [395] procured by others than the Curtis, Collins & Holbrook Co. Those were procured by Mr. Wheeler and Mr. Walker. I recall one block of land that I cruised and which Mr. Wheeler put scrip on, I sold him the description, my work, for $1,000. There were about ten or twelve thousand acres involved.

"Q. Were you aware at the time you negotiated for these different and several pieces of land covered by this consolidated action and that were deeded to Charles E. Gregory, that either Mr. Heppe or Mr.

(Testimony of George E. Tuman.)

Remick or anyone else represented to any of these different entry men that you or someone that you might represent or that some company would buy the land after they had proved up?

A. Did I authorize them to make such a statement?

Q. Did you know it? A. No, I did not know.

Mr. TUMAN, recalled for the defendant.

The first conversation that I had with Heppe about lands was on his return trip from Susanville. I am unable to state whether he was returning from Susanville from making his filing or his final proof. It was not before he had made his filing, that is certain. I think that conversation would relate to the lands involved in this controversy. I am not certain it was when he was returning from Susanville and I invited him to ride back to Prattville with me, or whether when he was making final proof or initial entry—on the way back he suggested that he had a number of friends who would like to take up claims, and a number of his friends did take up lands, so while no land was specifically mentioned at the time of this conversation it led, you might say, in a way it led up to it. [396] As a result of that he located his friends.

Mr. SHERTLEFF.—Q. Mr. Tuman, I show you a document purporting to be a telegram dated Chico, September 5—without any date otherwise as far as I can find and ask you if you ever saw that paper before? A. Yes.

(Testimony of George E. Tuman.)

Q. Did you receive it? A. I did.

Q. Was that received before or after F. A. McManus had made his final proof?

A. It would be after. I never consummated the purchase of McManus' timber claim.

Mr. SHURTLEFF.—Q. Mr. Tuman, I want to show you a paper and ask you if you ever saw that before (handing)?

A. Yes. I had a conversation with Mr. Holbrook about Mr. Rodgers both before and after he went east the second time. I think I informed him of the presence of Rogers in the Prattville District and the object of his being there. I told him afterwards of the result of Rodgers' work and trips from time to time. I never had any conversation with Rodgers touching the purchase by him of these timber lands that he was covered by the contract entered into by Mr. Holbrook and T. D. Collins and J. G. Curtis. I received one telegram purporting to come from Mr. Holbrook concerning Rodgers and his connection with a possible purchase of a portion of this land. I discussed that telegram with Mr. Holbrook after its receipt.

"Q. What did he say concerning it?"

Mr. PIER.—I object to that as being immaterial, irrelevant and incompetent and hearsay. [397]

The MASTER.—I will overrule the objection.

"A. He said that he sent the telegram as he be-

(Testimony of George E. Tuman.)

lieved it was necessary in the closing of his deal in the East."

I answered his telegram. I have not a copy of it, of the telegram I sent in reply. It was sent from the Postal Telegraph Co. in Tehama.

Mr. SHURTLEFF.—This telegram purporting to be a telegram signed by C. H. Holbrook, dated Erie, Pennsylvania, November 1, 1901, directed to G. E. Tuman, Tehama, I offer in evidence and ask that it be marked Exhibit "F."

Mr. PIER.—I make the objection that it is immaterial, irrelevant and incompetent and that the proper foundation has not been laid.

Q. Have you the original of this telegram, Mr. Tuman? A. I have not the original.

The MASTER.—I will take judicial notice of the fact that that will be in the files of the telegraph company. It seems to me to be sufficiently identified, I will admit it.

Mr. PIER.—The whole foundation upon which that is introduced is hearsay testimony.

Mr. SHURTLEFF.—The admission that he sent it is hearsay?

Mr. PIER.—It is not in the nature of an admission, it is his statement that he sent it. It is not offered against a proprietory or pecuniary interest. I cannot see in what way it is material.

Mr. PIER.—The particular line of my objection is this, that Mr. Holbrook is dead, and the whole system of the defense is to throw the burden of this

(Testimony of George E. Tuman.)

onto Mr. Holbrook, [398] who is not here to make an explanation of what he did or how he did it. His mouth is closed. We have to meet that kind of testimony and I do not want to be in the position of having allowed his statements to come in here, where they do not come properly in, without objection.

The MASTER.—The telegram has been marked by me as defendants' Exhibit "F." It is on the ordinary telegraph head of the Postal Telegraph & Cable Company and is as follows, omitting immaterial matter:

Defendant's Exhibit "F."

Erie, Pennsylvania, November 21–01.

G. E. Tuman,

Tehama.

Wire me immediately as follows: Rogers will take timber seven fifty and advance cash for fortv reserve pattric. No bonus. Answer.

C. H. HOLBROOK."

Upon receipt of it I wrote a telegram in accordance with an exact copy of that one or at least that portion of that one that was indicated and sent it at the Postal Telegraph office at Tehama to Mr. Holbrook at Erie. I think that word "pattric" is patents. That word is not a code word. I had not received any offer from Rodgers as to the timber. The Curtis, Collins & Holbrook Co. did not deposit any money in any bank or any place to our credit to use for the purchase of these lands from the entrymen. We did not receive any checks or cash or funds of

(Testimony of George E. Tuman.)

any kind or character from the Curtis, Collins & Holbrook Co. for the purchase of these entries. I don't think I ever gave Heppe money to loan to the different entrymen. That is, I did not give him the $400 to loan the entrymen, but I did give Heppe some lump sums of money which were applied on the loans, but it was small amounts. [399] The $25 location fee to Mr. Heppe and Mr. J. E. Remick was to be secured for them out of the selling price of the land from the entryman to Gregory and not out of the selling price of the land from Gregory to the Curtis, Collins & Holbrook Co. I considered that the entrymen were paying the $25. I saw but very few of the entrymen. I discussed with Mr. Remick and Mr. Heppe how that $25 was to be paid. They wished to be paid for their services in some way and wished my assistance.

"Q. The $25 paid to Mr. Remick and these different men who located, was that figured in striking, in consummating your deals with the entrymen for the property in very many of the instances?

A. It was mentioned in some instances I know. I don't know whether it was in all of them or not. I could not say. They were aware that there was a fee they were to pay these men, and they asked me to take care of that as a part of the purchase price. That was done in some instances, I know. Whether it was done in all I could not say."

I did not tell Heppe that the entrymen would receive $100 more than they paid for the land. I don't know what year it was I first became a director of

(Testimony of George E. Tuman.)

the Curtis, Collins & Holbrook Co. It was after Mr. Holbrook and Mr. Curtis sold out. I was a director four or five years and up to the time that I sold my 150 shares of stock to Mr. Collins in March, 1912. My recollection is that I took the place of Mr. C. H. Holbrook, Jr., upon his resignation. I was never on the board with Mr. C. H. Holbrook, Sr., or with either of the Curtises. I don't know which sold first, the Curtises or the Holbrooks. I know R. O. Wilson. I don't remember sitting on the Board of Directors with him. I think that he took the place of one of the other men, but I am not [400] certain and went on the same time I did. I took interest in the corporation from the time it was organized. I was familiar more or less with its affairs. John W. Aid never to my knowledge was in the employ of the Curtis, Collins & Holbrook Co. I am interested with Mr. A. W. Elam in a cruising company. That company is not interested either directly or indirectly in any shape or manner or form with the Curtis, Collins & Holbrook Co. Prior to Mr. Holbrook's negotiating and entering into the contracts Exhibits "A" and "B," I had never heard of T. D. Collins, J. G. Curtis, F. S. Collins or D. G. Curtis.

Q. When you were cruising these lands and acquiring them and looking them over for the purpose of making this deal had you in the remotest degree any contemplation or idea of selling them to the Curtises or Collinses or any or either of them?

(Testimony of George E. Tuman.)

A. No, for I didn't know them."

Mr. Holbrook on his first trip east with Mr. Golden went to Wisconsin. When Mr. Holbrook went east the first time we placed a minimum price on the land of $5 an acre and as much more as he might be able to get. I took a mortgage from Jim Baker to secure the amount of money borrowed for paying his claim. I could not *w*ay whether that was taken in my name or not. I had a conversation with Baker in relation to the purchase of his land after final proof and I purchased it from him. I went to him in relation to the purchase. I don't remember but one negotiation in making the sale. The only time he discussed the sale of his land with me was at the time I negotiated the purchase and we agreed on the price. [401]

Cross-examination.

I think I paid him a little more than $100 a claim for the Baker claims. I think it was a little more than $500 for the four claims. I paid him $100 extra because I could not get it cheaper.

"Q. Wasn't it on account of Tom Baker's entry; didn't you pay him an extra $100 because Tom Baker had taken up a claim also, but he was not able to prove up because you did not think the land was worth that money?

A. I don't know whether that came into the affair, or the negotiations or the reaching of the price or not now. I do know that I paid Baker something over $500 besides all the costs of them, for his claims.

(Testimony of George E. Tuman.)

Tom Baker's entry might have had an influence from his point of view and before getting the land I had to pay what they demanded. I think the money used to pay for the lands was kept in the Bank of Lassen County. I don't know how I got the money over from Susanville to pay the Bakers for their land. Sometimes I kept money with Bunnell in the safe at Prattville. I don't think Holbrook placed much of the money there, for he was there only once or twice during the summer of 1902. I don't recall going to Mr. Bunnell and asking him for money and his saying it was Holbrook's money and telling him it was all the same. Such a conversation might have occurred. If such a conversation did occur, it was Holbrook's and my money to be used in paying for the timber lands. I don't remember such a conversation taking place when I wanted to get some money to give to Edward Brase. I think that some of the money I advanced to [402] Heppe was used for the purpose of paying the entrymen's fee to the Government, but I did not know that until afterwards. I don't think I advanced him such large sums as $1,000 for that purpose without knowing what the money was to be used for. I do not think I would advance him $400 without entering what it was to be used for.

The MASTER.—Now, I understand from your answers that you did not advance him $1,000 in a lump sum and you did not advance him $400?

A. That is correct.

(Testimony of George E. Tuman.)

Mr. PIER.—That is what you want me to understand—you never advanced him those sums?

A. Not as large sums as that. I loaned the Allens money directly or indirectly. I don't remember how it was done. I did not know that Heppe handed them the money nor what form it was in. Where Heppe made the locations I sent Elam to make the loans of the money, so that there was no occasion to advance Heppe more than small sums at any time.

"Q. You have stated that the only ones that made locations were Heppe, Remick, Aid and Cameron. What do you mean by that statement?

A. They were the only ones to whom I showed plats or numbers of good timber lands.

Q. Didn't you ever give any of those to Elam, Arthur Elam?

A. I don't think so, although, as I have stated, Elam was running compass for me, in the work, and might have been familiar with it, for that reason, but I do not think I ever gave them to him in the sense you mean.

Q. Well, now, what I want to know is the sense [403] in which you mean it. Let me read this testimony to you, page 2802:

"Q. Mr. Tuman, in assembling the lands involved in these different suits which have been consolidated who assisted you in locating lands, what persons, what parties?

A. Do you mean in making the examination of the lands?

(Testimony of George E. Tuman.)

Q. You have already testified that the lands were examined by you and Mr. Golden?

A. The first lands; yes. Later Mr. Elam worked for me as compassman.

Q. I meant in showing the lands to these different locators? A. There was Heppe.

Q. Just give their initials?

A. J. H. Heppe, J. E. Remick, John W. Aid and Alex. Cameron.

Q. Were there any others that you can think of?

A. I do not think so, not that I can recall just now."

Q. What I have reference to is what do you refer to there as to what the duties of those four men were, or what they did to assist you in locating these lands?

A. At their request I gave these men descriptions on plats of good timber lands, on which they proceeded to locate friends or acquaintances with the hope presumably of an ultimate profit to themselves.

Q. That is they got the people and took them out and showed them the lands. A. Yes.

Q. In the case of Mr. Elam he also went out and showed the people the lands, did he not? [404]

A. Yes.

Q. Now, what was the difference between the character of work that Mr. Elam did and that which Mr. Heppe and Mr. Remick and Mr. Aid and Mr. Cameron did?

A. Elam hadn't anything to do, so far as I know, with people themselves.

(Testimony of George E. Tuman.)

Q. That is he had no connection with getting people to go out and locate on the land?

A. Nothing to do with that.

Q. So that whenever he was told to take somebody out and show them a piece of land he would do that, but had nothing to do with initiating them or offering them any encouragement to go out and look at land? A. Yes."

I don't think Head ever got anybody to go out and look at land. He may have taken somebody out and showed them land. I could not say. He was familiar with the lands.

"Q. Did you ever give him any descriptions to take people out?

A. He was competent to take them out.

Q. You may have given him some descriptions to take people out?

A. I don't recall of ever having done so. My impression is I gave descriptions to these four men that I have mentioned. A lot of notes were taken in the name of Mr. Lewis, some were taken in the name of Arthur Elam. I don't remember taking any in the name of Mr. Remick. Most of them were either in the name of Elam or Lewis. Lewis was a mining man, a friend of Mr. Holbrook, also myself. He was not in Holbrook's employ. He lived in San Francisco. [405]

I don't know where the money was paid to the Aids for their lands. I don't think it was paid in the cloak room at the Park Hotel. It might not

(Testimony of George E. Tuman.)

even have been paid in Chico, but one place I am certain it was not paid was in the cloak-room of the Park Hotel.

"Q. Now then, these people that wanted agreements beforehand, they wanted these agreements in writing, didn't they?

A. Some did, and some only verbally, satisfied with a verbal promise.

Q. Well, now, your great trouble was to satisfy these people that it would be all right without a written agreement, was it not?

A. It troubled me some, yes.

Q. There were a great many that came to you and insisted upon a written agreement?

A. Some insisted upon written agreements.

Q. That you refused to give?

A. That I refused to give."

Harry Ratchford was one of those who insisted upon a guarantee. I don't know where he is now. He was still living near Prattville at Senaca in 1903–04 when I left there. L. W. Bunnell wanted an argeement. He is dead. The Burrises wanted a guarantee. I told them they would have to rely on the situation, that I could not give them a guarantee. The yellow piece of paper on which I had the list of names I left at my office during the noon hour. [406] I think L. A. Bunnel's claim must have been taken up some time in 1902, as all that district was put in the Forest Reserve in 1902. His entry could not have been made some time in 1903. His claim

(Testimony of George E. Tuman.)

was close to Prattville, probably a mile or two. Nellie Stover's claim was on Stover Mountain. There were a number of claims put in on Stover Mountain several years afterward, all of which claims were located there by Massey or Victor Barber. C. E. Emerson's claim was about seven miles northeasterly from Prattville. It is two or three miles east of Stover Mountain. I don't know when he took it up. It was either in 1902 or the winter following at that same time Roberts and Engal acquired a lot of timber land up there. Their operations were a little before mine.

"Q. Was it not a general rumor that they would pay them $100?

A. It was not; the rumor was $75 as I heard it."

That is the rumor that I heard. I had an understanding with Engal and Roberts that I would not go over the mountain range on the Quincy side. Keddie was in the same group of operators.

"Q. Did you have an agreement with them that you would not try to acquire lands over on the other side, the Quincy side of the mountain?

A. I had an understanding as to a certain district."

The boundary line of that district was approximately on the rang line between 10 and 11 east. I was not to go east of there and they would not go into range 11.

"That is you would not go into Range 11 and [407] they would not come into Range 10; is that the idea?

(Testimony of George E. Tuman.)

A. To tell the truth about them, that was something like the arrangement; it was not respected on his side quite as well as I did."

"Q. If you got the price that you claim you did for them, $1200 a claim, if you had sold them to the Curtis, Collins & Holbrook Company for that price you would still have one-fifth or one-sixth interest in them, you and Mr. Holbrook would; instead of that, as it was, you parted entirely with any interest in them and all you got was the cash. What was it that induced you to sell these claims to the Wheelers? You would have got the same price from the Curtis, Collins & Holbrook Company?

A. Well, I could not say now what the reason was other than that we thought they were logical buyers and went to them with the offer of the land; we offered them the land."

Mr. Holbrook and I together negotiated the sale to the Wheelers. We transacted our business with Swezy, who called in Jack Cook. We went to them to sell the descriptions of this land because we had no way of handling the land ourselves and we had wind of the fact that there were 200 entrymen coming from Minnesota to take up that land at that time. I am positive the price received from the Wheelers was $1,000. I did not assure Mr. Swezy at that time that I could deliver these Heppe, Forson and Holmes entries although I had already cruised them. Mr. Swezy did not have any more scrip to lay on those particular pieces of land that Heppe, the Forsons and Holmes filed on, that is how we happened

(Testimony of George E. Tuman.)

to omit those pieces. [408]

Q. Yet it is right in the heart of it?

A. Yes, and he left it right in the heart of it purposely.

Q. And very much scattered?

A. And very much scattered."

John Aid did not tell me who his friends were that he would like to take up land in his first talk with me. I think that his brothers and his father had already filed on their claims along with himself. I do not remember any conversation with John Aid before he had filed on his land in reference to loaning him money if he wanted it to take up the land for himself and his father and brothers. I don't think he was given $25 a claim profit for his father's and his brothers' claims. I don't know from my own knowledge who composed the party in which John Aid, his father and two brothers were, all of those, somebody else received the $25 for them. Subsequent ones that Mr. Aid located himself he received $25 for. I don't know whether Mr. Rhodes was a member of that first party or not. I think Mr. Remick received $25 for locating the Aid party. When John Aid came over with the next party he got $25 when they sold their land. Nobody got $25 until the land was actually delivered to me. I do not personally know of a single case where this location fee was mentioned to the entrymen, either before the land was sold or at any time. At the time Frank McManus sent me the telegram which I thought was a bluff for the purpose of getting a higher price we had in our negotiations for

(Testimony of George E. Tuman.)

the purchase of the land got higher than $100 over and above expenses. Mr. Elam [409] and I went to Mr. McManus to get the money back that I had advanced him. I might have sent Heppe to get the money. I am not certain. Very likely I did. The company that Mr. Elam and I formed for cruising purposes was formed last summer some time about a year ago. The company was not incorporated and we only kept the name for a couple of months or so. We adopted the name I think about a year ago. The name was about all there was to the company and we abandoned it two or three months later.

"Q. And that company cruised the lands of the Curtis, Collins & Holbrook Company while it was formed?

A. I think Mr. Elam had taken the job of cruising before the company was formed."

I think, I would not be positive about that, but he took the job of cruising the Curtis, Collins & Holbrook Company's lands as a private enterprise.

The land to the southeast of Henry Clay White's land for a couple of miles is good timber land and is up a branch of Rock Creek. By the nature of that country all that timber that lies back of that land should come to market over this land of Henry Clay White. All of that timber land we would like to have gotten. This claim of Henry Clay White's I think was made some little time before the Forest Reserve went on. All the good timber on the east fork of Rock River was located. State scrip was put on there by J. M. Ingals and was canceled. That scrip

(Testimony of George E. Tuman.)

was placed about the same time that White located. I did not have anything to do with the placing of that scrip nor did I give him the description of the land. [410]

Redirect Examination.

Keddie and Ingals were working for the Roberts Lumber Company. I had nothing to do with Roberts. I had my understanding with Engals and Keddie. My understanding was that I would not make a cruise or be instrumental directly or indirectly in the acquirement or purchase of lands east of the line that we agreed upon. This understanding was along after Mr. Golden had left me. I had already cruised nearly all the land. I was familiar with the lands that Engal and Keddie were endeavoring to acquire. There were vacant Government lands that could be acquired in the District where Keddie, Engals and myself were acquiring the lands which were valuable for their timber. I knew the amount of timber on some of them. If the entrymen had entered and filed on these lands they would have been acceptable to me to carry out the objects of this transaction. It seems to me that you will find more men who are not competent cruisers than the reverse. In making a cruise of 160 acres the first move is to locate the nearest Government corner to the land that I wish to look over, and from that run a survey line by pacing; in our work we do our measuring not by chain or by any measurement other than by counting the steps, pacing; and by the use of a compass we keep a straight line and we lay out the section or piece of

(Testimony of George E. Tuman.)

land in subdivisions. The Government lands, you know, are all laid out in 40 acre subdivisions and a section has 16 of those forties in it, so that by [411] keeping rectangular courses, you can go in straight lines over all portions of the section or forty or whatever the piece of land is you are to look at. Cruising is dependent, of course, to an extent as to how well it is to be cruised, by the number of times that a forty is gone through, 40 acres, which is a quarter of a mile each side of it, square,—for a quarter of a mile on each side each way you run through once, twice, four times or eight times. On an eighth run cruise every tree in the 40 is counted; every tree is counted and measured by the eye; in a four run cruise just one-half of the forty is located and in a two run cruise the same proportion, and a one run cruise has a proportional amount only. We claim that the eye becomes so experienced that in looking at a tree you can catch the dimensions of it. I cruised actively from 1895 to 1907, twelve years, in every county in the northern and central part of this state and some in Oregon. I knew a great many of the people who pretended or offered themselves as cruisers in Tehama, Plumas, Sierra and Shasta Counties and that vicinity during the time these lands were being cruised and acquired. There were not very many at that time. Of the men that we considered good timber cruisers there are probably a half dozen that I can call to mind. During the years 1895 to 1907, there were a great deal of these lands taken up under the Timber and Stone Act. Those were the years when there was

(Testimony of George E. Tuman.)

the greatest activity in taking up land under the Timber and Stone Act. I never knew of an entryman going out and filing on a piece of timber land without knowing something about the amount of timber on it and a cruise having been made by somebody [412] In my opinion an ordinary layman unfamiliar with timber and the Government corners could not go out in a body of timber and select 160 acres, find the corners and estimate the amount of timber on it or tell anything about it. I think I told Mr. Holbrook about my understanding with Keddie and Engals. I did not communicate it to any of the other directors of the corporation. I refused to give oral agreements. I have not received any of the profits that might flow or come from the present cruising of the Curtis, Collins & Holbrook lands by Mr. Elam. The reason for that cruise arose some four years ago before this suit was brought. Its purpose is that the lands of the Curtis, Collins & Holbrook Co. and those of Mr. Walker are intermingled in that district and I think that to some extent I helped in promoting the idea of a consolidation, of an exchange of lands. At any rate with that purpose in view I made with Mr. Walker, the first map of the exchange of lands that is to assemble and bunch both company's lands in better form. Those negotiations I took up with Mr. Walker four years ago personally and it is in consummation of that that this cruise is being made by the Curtis, Collins & Holbrook Co. of the lands that Walker is supposed to trade and also the lands of the Curtis, Collins & Holbrook Co. that are to go

(Testimony of George E. Tuman.)

to Walker so as to see that it is a fair trade that is being made.

Recross-examination.

The contract for Mr. Elam to cruise this land was made over a year ago.

"Q. Was it made as long as two years ago? [413]

A. I could not fix the date for I did not make it or was not present. I only know what Elam told me, that he had arranged with E. S. Collins to make a cruise of it."

I don't know whether it was before or since I left the directorate. It was somewhere near that time I believe. I left the directorate of the corporation at the time I sold my stock in February, 1912.

"Q. It was about that same time that this deal with Elam was consummated to cruise the land?

A. As I said I am not sure as to the point of time, not having made it, but it was either at that time or somewhat before."

Further Redirect Examination.

Mr. SHURTLEFF.—Q. Mr. Tuman, you did not think that a cruise was necessary, did you?

A. No, I did not.

Q. And it was only because Mr. E. S. Collins insisted that he would not exchange these lands until he knew of the timber upon it that a cruise was made; isn't that a fact, that Mr. E. S. Collins is the man who insisted upon the cruise? A. That is true.

Q. And Mr. Walker himself thought that a cruise was unnecessary, did he not? A. Yes.

Testimony of George E. Tuman, for Complainant (Recalled).

GEORGE E. TUMAN, recalled as a witness for complainant, testified:

O. A. Wheelock took up timber land in Plumas County [414] made final proof upon it; I afterwards purchased it and later Mr. Holbrook and I sold it to the Curtis, Collins & Holbrook Co. The same thing is true as regards the entry of Laura M. Wheelock, F. Y. Wheelock, Carrie E. Wheelock, Nellie Branley, Mollie Treleaven, Marietta Branley, John P. Branley, Michael Branley, Miles Tanner, George Tanner, Samuel Seelight and George Kennie. I have heard that at least part of these various entries have been held for cancellation on the ground of fraud. I have heard that there were charges of fraud made against the Branley entries and the Wheelock entries. As regards the Tanner and the Seelight entries I think I heard of it but I don't know how or when. I discussed these claims and the charges of fraud that were being made against them with Mr. Holbrook. He said that the charges were unfounded. We discussed the advisability of fighting these claims before the Land Department. No one else was present. Mr. Holbrook did not want to do anything in regard to the matter. I wanted to contest them. I did not discuss this with Mr. Shurtleff and Mr. Holbrook together. I discussed it with Mr. Shurtleff alone. Mr. Shurtleff wanted to contest them. That was his individual opinion. It has always been my understanding or impression that it was Mr. Hol-

(Testimony of George E. Tuman.)

brook's influence that prevented these cases from being contested.

Mr. PIER.—I think that is all.

The MASTER.—Mr Pier, I don't know yet when this conversation took place, what time it was; it might be quite immaterial.

Mr. PIER.—If the fact is that Mr. Holbrook's influence was sufficient to prevent this, it showed that he had some power with the corporation. [415]

The MASTER.—I do not give any weight to that testimony at all because he states it is his impression and thought. I do not think that is evidence. That is what Mr. Tuman thought about it.

Mr. PIER.—We are in the camp of the enemy. I do not think it is upon us to clear up those points; it is up to them.

Mr. TUMAN.—I have been unable to fix the time when I became a director of the company. There may be some records of the company to show it. I am not sure; I could not fix the date from memory, but it was about 1906. I don't know whether Charles Holbrook, Jr., went out of office as a director when his father sold his stock. The first conversation that I had with Mr. Holbrook I cannot fix the time within twelve months, but it was either during the latter part of 1906 or the early part of 1907, Mr. Holbrook was not at that time connected with the company, at any rate, he had sold his stock and I am sure had resigned, as a director.

"Q. Then how could his influence prevent a contest of these matters?

(Testimony of George E. Tuman.)

"A. Well, I don't know how I am to answer that. It was undoubtedly his influence that prevented the contests being made and contested."

It was following my talk with Mr. Holbrook that I had a talk with Mr. Shurtleff on the subject about the same time. That would be some time in 1906 or '07. I have had several subsequent conversations with Mr. Shurtleff at different times since that first time. Also with the young Mr. Collins; sometimes after the talk with Mr, Holbrook and Mr. Shurtleff, perhaps a year later, about 1908. I mentioned it to the old man Collins still later, some time [416] about 1909 or as late as 1910, before these suits were brought.

Mr. PIERCE.—I am offering in evidence these certified copies of these letters showing that the various entries that I have just mentioned were cancelled, and also for the purpose of showing the grounds upon which they were cancelled, and if the recitals in the certified copies of these letters are not considered sufficient by the defendants, upon that ground then so much as is necessary to establish whatever appears in the original papers, I want to offer in evidence.

Mr. SHURTLEFF.—I will object to these collectively upon the grounds that they are immaterial, irrelevant and incompetent for the following reasons: That the acts of the defendant company which it is claimed are proven by the introduction of these certified copies occurred long after the land was acquired by it from those who conveyed to it directly. That the evidence does not tend to show motive or

intent because there is no proof that the defendant heard of the facts alleged in these different cancellations, or that they knew of such alleged facts prior to the contest by the plaintiff, and the acquiring of these lands described in these several cancelled entries. That none of the decrees of cancellation are *res adjudicata* as against these defendants because no notice was shown to have been given the defendant company and it is not obliged to gratuitously or voluntarily or otherwise to defend these contests. That the proposed and offered evidence does not tend to throw any light on the facts involved in these cases, or that the defendant company had any information concerning the alleged acts of fraud in the cases now on trial, because it had acquired all of the lands involved long prior to the dates of the proceedings for cancellation. Again, that the proof shows that the Government had issued patents covering a large amount of the lands involved here after it became cognizant of the [417] alleged facts of these cancelled entries. That the offered evidence does not in any manner tend to prove estoppel by conduct because at the time mentioned in these cancelled entries the defendant had acquired for a valuable and adequate consideration all of the lands involved in these suits. That the evidence does not show an admission on the part of defendant because under the facts as presented here there was no legal or moral duty cast upon defendant to either affirm or deny these accusations. We further object upon the ground there was no evidence that the defendant corporation had notice

of the proceedings; that the cancelations are too remote and too far removed. That there are no findings of fact—I will just state this generally—in any of the final orders of cancellation showing the grounds upon which they were made; that there is no proof that the cancellation by the Commissioner of the General Land Office or his assistants were approved by the Secretary of the Interior under the provisions of the sections of 2451 of the Revised Statutes.

Now, in addition to the objection I have made, I want to object specifically to each one of them; in other words, in the case of Michael Branley, the cancellation was on July 9, 1906. There is not a word of proof or anything of the kind that we had any notice. The purpose of that is to show two things, as your Honor expressed it, that it amounts to an admission upon the part of the Curtis, Collins & Holbrook Company that inasmuch as these particular entries were not contested by them that there was something wrong with them and hence there must have been something wrong in all of the others. Now, the papers in that case that have been offered here show that the Government had notice before cancellation that Michael Branley had conveyed to Charles E. Gregory, because there is a report here that on September 22, 1892, he acknowledged [418] the deed transferring the property to Charles E, Gregory. The Special Agent, J. N. High, on February 10, 1904, notified the Commissioner of the General Land Office that C. H. Holbrook was the beneficiary of this entry and *and* that George E. Tuman had some ostensible

interest. No proof of notice either to Charles E. Gregory, C. H. Holbrook or George E. Tuman. The date of notice of cancellation is March 24, 1906.

In the case of Carrie E. Wheelock, the date of the notice of cancellation is April 10th. I do not seem to have the date. Service on claimant only. Special Agent H. C. Cullom, Jr., in a report dated January 5, 1903, states that on or about September 11, 1902, claimaint conveyed to Charles E. Gregory; that is the date of the acknowledgment of deed, and as your Honor knows it is presumption of law that the Government takes notice as well as any private individual, that a deed is presumed to be delivered upon its date; the Government had notice of that and they could have well served Mr. Gregory. This whole proposition goes to the point, your Honor, that there was no obligation cast upon us to contest them. I am not arguing whether or not they are good, bad or void, but as against us, I say that they amount to nothing; no service upon Charles E. Gregory; and the date of cancellation is April 29, 1908.

In the case of Samuel Sealbright, the report of Frank J. Parke, Special Agent of the General Land Office, dated March 7, 1906, contains a statement that claimant has transferred to Charles T. Holbrook, and that entry was made at instigation of Tuman. There is notice to Tuman. There is also among the papers a registry receipt dated April 20, 1908, purported to be signed Charles H. Holbrook, but no [419] proof of signature nor what the receipt covered. You can-

not tell from these papers what it was that they transmitted at that time to Mr. Holbrook. There is also among the records a registry receipt signed "Charles H. Holbrook, by F. R. Lewis"; no authority shown on the part of Lewis. Neither does it appear what this receipt covered. Apparently there is no proof, so far as I can discover, of any service upon Sealight. The date of the cancellation is October 13, 1909.

In the case of Maggie Branley, the notice is dated May 10, 1904, served personally, May 18, 1905. Reports of Agents found in the papers state that Charles H. Holbrook was interested in the land; no service or notice to Holbrook. The cancellation was September 13, 1906.

In the case of Marietta Branley, we object to that one upon the ground that in the report dated February 18, 1904, Special Agent High states that Charles H. Holbrook is the beneficiary; no service upon Holbrook; date of cancellation October 1, 1906. There is no reference to any deed to Gregory so far as I can find.

To that of Frederick Y. Wheelock, we object on the ground that the report among the papers of Special Agent Cullom, *Special Agent*, dated February 6, 1903, refers to a deed made by the claimant to Charles E. Gregory acknowledged October 1, 1902; also among the papers the report of Frank J. Parke, special Agent, dated March 6, 1906, in which it is stated that the entry was made at the instigation of Tuman for Charles H. Holbrook, who holds title to

the land. No proof of service on Charles H. Holbrook, although the Commissioner states in his report that Holbrook was notified; no proof or claim of any service of any kind, character or description upon Mr. Gregory. Date of entry, April 29, 1908.

As to the case of Lura M. Wheelock, among these [420] papers is found the report of H. C. Cullom, Jr., Special Agent, dated February 6, 1903. The report being directed, as the others were, to the General Land Office, stating that the entryman conveyed to Charles E. Gregory by deed acknowledged October 1, 1902; nothing to prove any service on Gregory.

The next is the case of Nellie Branley, now Mrs. Louis Schneider; date of notice of cancellation is December 17, 1906, while the date of the final letter of cancellation is June 3, 1908.

The MASTER.—That is the notice of cancellation?

Mr. SHURTLEFF.—The date of final cancellation; they served one notice first and then made the cancellation.

The MASTER.—What was the date that you had of the cancellation?

Mr. SHURTLEFF.—The cancellation is dated December 17, 1906, that is the notice. Date of cancellation is June 3, 1908. Among the papers was found the report of J. M. High, dated February 18, 1904, in which it is stated that George E. Tuman gave the money to entrywoman, but it was developed in the testimony that C. H. Holbrook furnished it. In that particular case there might not have been

sufficient there to prove that he was the transferee, but the Government had some notice there that C. H. Holbrook had some claim on the land and there is no notice to him.

The next is that of Mollie Treleaven. We find the report of H. C. Cullom, Special Agent, dated February 23, 1903, in which he states that on October 2, 1902, a deed was acknowledged by the claimant transferring the property to Charles E. Gregory; no proof of service on Gregory. Date of cancellation September 13, 1906. We object to that entry and we are objecting to all these entries upon the grounds stated.

George Tanner. There is a report on file by F. J. Parke, Special Agent, dated May 7, 1906, in which he states the entry was made by G. E. Tuman for the benefit of Charles [421] H. Holbrook, and among the papers in this matter is a press copy of a letter dated June 6, 1907, by Assistant Commissioner Fred Dennett, in which he says that Special Agent reports that this land had been transferred by deed to Charles E. Holbrook of San Francisco, and adds: "In view of this report it will be necessary to serve notice of the orders of proceedings upon Mr. Holbrook." No notice of any kind or character or service upon Mr. Holbrook. The entry was cancelled May 16, 1908.

In the case of Miles Tanner, the objection is, among the papers is found a report of Frank J. Parke, dated March 7, 1906, in which he states that the entry was made through the instigation of George

Tuman for the benefit of Charles E. Holbrook. And there is a registry receipt signed: "C. H. Holbrook, by F. R. Lewis." No proof of any authority upon the part of Lewis. This registry receipt is dated February 11, 1908. Entry cancelled October 8, 1908.

O. A. Wheelock; there is a report on file of H. C. Cullom, Jr., Special Agent, dated February 5, 1903, in which he states that claimant transferred the land to Charles E. Gregory by deed acknowledged September 11, 1902. There is also a report of Frank J. Parke, Special Agent, dated March 6, 1906, in which he states the entry was made through George Tuman, who was engaged by Charles H. Holbrook of San Francisco to make these fraudulent locations. The land, so he states, was transferred on day of proof. No notice to Charles E. Gregory. Entry cancelled April 29, 1908.

George Kennie; that is a very meager report. There is no service upon the entryman. He says he cannot be found. There is a registry receipt of C. H. Holbrook but it is not stated what it covers, what was served upon C. H. Holbrook at that time; and that is something we have a right to know. [422]

John Pattick Branley, there is a report of J. N. High, dated February 18, 1904, in which he states the land was taken up in the interest of C. H. Holbrook. This is the case, and not the other, where the record is very meager. Nothing as to notice to Gregory, as in three or four of the others. That is the record.

The MASTER.—My conclusion, after taking several days to go through these papers, and find out what was in them, and also considering the effect of them is that the offered evidence must be rejected. Now, I do not propose to go at length into my reasons for that, but I want to put it upon as broad grounds as possible. So far as Mr. Holbrook is concerned, taking up first the question of notice, according to the purport of the documents, Mr. Holbrook was notified on February 15, 1908, as to the entry of Samuel Sealight. My notes suggest that in the case of George Tanner there is no proof of notice, but I will assume that it was there and in one of the other papers. The four Wheelock entries were notified to Mr. Holbrook on January 26, 1907, and then he wrote a letter stating that he had parted with his interest and had no longer any interest in them. You see in this matter I am overlooking any question as to whether Mr. Holbrook actually had notice or not; I am assuming that his signature has been proved and I am assuming that the registry return receipt satisfactorily identifies the matter that he was notified of. As a matter of fact, I think I may take judicial notice of the fact that the number of the registered package is always contained on both the letter and on the card in question, and that is identical in these files. Now, in these Branley entries, including Mollie Treleaven, there appears to be no notice to Mr. Holbrook at all. As to the directors the record up to day does not show any notice of these cancelled entries at any time. [423] I do

not think that it even shows as to E. S. Collins. I have examined all that testimony—

Mr. PIER.—Mr. Tuman has just testified as to it.

The MASTER.—I am saying up to to-day, up to the time that Mr. Tuman testified: Mr. Tuman has been examined to-day. The point of his becoming a director is so vague, the whole matter is so vague, that I am very glad I can rest it on a point other than the point of notice. Of course, so far as Holbrook was concerned, those notices to him were so much waste paper. Mr. Tuman testified at one place, page 641, that Mr. Holbrook had sold his stock, and I may presume he ceased to be a director, in February, 1904. Mr. D. G. Curtis says that he sold part of his stock in February, 1905, and the balance in February, 1906, and resigned his directorship. All these notices occurred afterward, and it is just exactly as though they might have notified some one who had never had any connection with the matter. Now, the only evidence that there is in the record that would at all tend to show notice to the company is the testimony that was elicited to-day, and I will assume for the sake of this ruling that it is sufficient for that purpose. If it depended upon that I would want to consider it carefully. I do not think that the testimony is material. The contention of the Government is that its materiality consists in the fact that the silence and acquiescence of the company after notice of these cancellations being carried on was a confession to the effect not only that the entries involved in the proceedings are weak, but that all the rest of the property involved was

weak in its title. It has already been pointed out that at the time when these notices were given, and there are a number of them, so far as I know in the record as to Mr. Holbrook, the company had the equitable title, I think, to all of the lands concerned here involved in the cancelled [424] entries, and with the exception of a few the patents had issued. I cannot see how the evidence has any bearing on the question of good faith in the original purchase. Of course that is the only thing that we are considering. Their inactivity with the knowledge of these proceedings, which I assume, does not seem to me inconsistent with either original bad faith or original good faith in the purchase. If they had taken these titles knowing that they were fraudulent, and assuming for this purpose that they are all fraudulent, why, they would naturally do nothing at all; but they are equally consistent in my view with a situation where they had taken the titles in the best of faith in the first instance, because in the latter case they would not do anything either; that is to say they would do nothing further than to investigate themselves and determine whether or not the charges were properly brought or not. The most I can say is that their inactivity may be an admission of the fact that the charges of fraud against these 14 entries was proper. But all the rest of them were already patented, and it does not carry any conclusion in my mind as to their original good faith, or in the way of an admission by conduct of the character of those entries. Furthermore, it is not evidence in any wise as to the others. The other entries might

have been good and these bad; that would be just the position they would take, especially since it does not appear to me to be clear that they have done anything other than what they had a right to do, assuming that they knew about it; I do not feel called upon to admit them in testimony. Now, since I have rejected this testimony, under the rule it is my duty to make as brief a statement as I can of what it consists, and that practically was done by Mr. Shurtleff in his objections, but I will go through it as briefly as I can from the notes I have taken. [425]

Mr. PIER.—I think your Honor's remark contains the whole of my argument on this point, that the fact that any title is being attacked, as to land for which they had paid $1,200 to $1,600 in each of these particular cases, it being attacked on the ground of fraud, if that entry is cancelled upon the books of the Land Office it would be open to entry by some other party, would cause them inconvenience and expense to contest it with the other party, and probably cause a loss of their case because of fraud. Furthermore, if they were secure in that position as being bona fide purchasers they would have nothing to lose by coming in and applying to be given a hearing in these cases and everything to gain, and therefore their actual act after knowing that there is a charge against them pending in the Land Office, that the Land Office is checking them up and is cancelling them upon its books, whether rightfully or wrongfully, is a virtual confession that they did not dare to go in and apply [426] for a hearing or contest these entries, and the reason why they did not come

in in these particular cases—if these were the only ones in which they were fraud they would come in in these particular cases, but they did not dare to come into these cases because they had so much other land located by the same method that they did not dare to come in and contest these cases for fear that evidence as to these others should come to light.

This testimony was ruled out by the master. The statement of the matter ruled out is contained in pages 2948-49-50-51:

"All of these entries were cancelled by the Government after charges made and all by default. There was no hearing in any of them. In some of them there was an appeal, in the Wheelock entries, but otherwise there was no hearing at all. One group of cancellations consists of Samuel Sealight, George Kennie, Miles and George Tanner; the other group is composed of Orlando A. Wheelock, Carrie E. Wheelock, Frederick Y. Wheelock, and Laura Wheelock; the other group is composed of the entries of Marietta Branley, Mollie Branley, John P. Branley, Mollie Treleaven, Maggie Branley and Michael Branley. Now I will give you what these documents show as briefly as possible, eliminating unnecessary matter, and in no case referring to the proceedings by way of notifying the entrymen which under my theory of the case are immaterial.

The papers in the case of Samuel Sealight, show the Commission's letter to the Register and Receiver dated October 13, 1909, cancelling the entry which had been initiated under the timber and stone act on October 29, [427] 1902. It recites and the files

show a letter to proceed and give notice of hearing of charges of Special Agent, the date of which letter is June 22, 1908. The files show that Mr. Holbrook was notified of the hearing February 15, 1908, that is to say that the registry return receipt is signed 'Charles E. Holbrook by F. R. Lewis.' There is also a registry return receipt dated April 20th, 1908, acknowledging notice of receipt of the decision of the register and receiver cancelling the entry. I assume that those are his signatures. So much for the matter of Sealight. The other dates I take it are unimportant.

In the case of George Kennie, the final letter of cancellation by the Commissioner is dated March 30, 1910; the entry was made October 29, 1902. A letter to the register and receiver directing notice to be given of charges of fraud made by Special Agent dated June 22, 1906. The notice to Holbrook is the same as in the Sealight case. The original files in the case of Miles Tanner show that the final letter of the Commissioner cancelling the entry on default was dated August 8, 1908. The entry was initiated October 29, 1902. The register and receiver had been ordered to issue notice of charges made by Special Agent by letters of the commissioner dated June 22, 1906 and June 5, 1907. As to any letters to Mr. Holbrook, the record is the same as in the case of Sealight.

The original files in the case of George Tanner show that the letter of Commissioner cancelling the entry was dated May 16, 1908; that the entry had been initiated on October 29, 1902. Hearing was or-

dered by the letter of [428] the Commissioner dated April 4, 1907, directing a hearing on the report of Special Agent. In all of these, as I have heretofore said, the charge was that the entry was fraudulent in that it was made at the instigation of one George Tuman a timber cruiser in the interest and for the benefit of one Charles E. Holbrook of San Francisco, a timber speculator. They are all much the same in that respect. According to my notes here there was no notice to Holbrook, but if it is wrong it is not going to affect the result.

The files offered in the matter of Orlando A. Wheelock, show that the Commissioner's letter wherein his proceedings become final and the entry was cancelled was dated April 29, 1908. The entry was made on September 3, 1902. Proceedings on the report of Special Agent ordered April 11, 1906. There is a notice given to Holbrook, that is to say, a registry return receipt purporting to be signed by him individually, and a letter from him purporting to be signed by him by certain initials illegible, dated January 26, 1907, in which the notice was returned, and disclaiming any interest in the proceedings on the ground that he had parted with his interest in the land.

The files offered in the case of Carrie E. Wheelock, show a Commissioner's letter cancelling the entry dated April 29, 1908. The entry was taken up September 3, 1902. The letter ordering proceedings on the report of Special Agent was dated April, 1906. The notice to Mr. Holbrook is the same as in the case of Orlando Wheelock.

In the files of Frederick Y. Wheelock it is shown that he makes his final decision cancelling the entry, April 29, 1908. The entry was initiated September 3, 1902. The [429] letter whereby proceedings on the charges of the Special Agent were ordered was dated March 30, 1906. The files, so far as their notice to Holbrook is concerned, are the same as in the other Wheelock entries.

The files in regard to the entry of Lura M. Wheelock are similar in all respects to the files in the case of Frederick Y. Wheelock.

The files offered in the matter of Marietta Branley show the Commissioner's final letter cancelling the entry was dated October 1, 1906. The entry had been made by her on September 11, 1904. There was a letter of suspension on the report of the Special Agent dated April 29, 1904, and a decision made by the register and receiver on default March 16, 1906. There is no evidence of notice in the files to anyone except the entrymen.

Nellie Branley, the final letter cancelling is dated June 3, 1908. The entry had been initiated on September 11, 1902. On May 3, 1904, the register and receiver gave notice of Special Agent's charges of similar effect to what I have already stated in these others. In none of these Branley entries was there any notice to anybody but the claimant.

In the case of John Patrick Branley, the letter of the Commissioner cancelling the entry is dated August 3, 1908. The entry had been initiated September 11, 1902. The notices of charges to the group of claimants was given August 1, 1907. The

(Testimony of George E. Tuman.)

decision of the register and receiver, December 7, 1907, and notice of that decision given to claimant January 10, 1908. [430]

In the case of Mollie Treleaven, the final letter of Commissioner dated September 13, 1906, and decision of the register and receiver was dated February 2, 1906. Notice by mail given to claimant on February 10, 1906.

In this and all these files there are reports of various special agents beginning with Cullom, 1903, High, 1904, and Parke, 1906, but I have not thought it material to say anything about it in this record.

In regard to the entry of Maggie Branley, the papers show that the final letter of the Commissioner canceling the entry was dated September 13, 1906; that the decision of the register and receiver was given February 5, 1906. Notice of that decision was given by mail February 10, 1906.

The files in the entry of Michael Branley show the Commissioner's letter cancelling the entry dated July 9, 1906. It recites, and the papers show the suspension of the entry on May 3, 1904, and its cancellation. Personal service to claimant June 8, 1905. Decision of the register and receiver on default November 16, 1906. Notice of that decision served by mail on the next day. I think that is all that is necessary. The Government may have an exception."

TUMAN'S TESTIMONY RESUMED.

Mr. PIER.—"Q. Mr. Tuman, when you advanced money to an entryman to take up land, to pay the

(Testimony of George E. Tuman.)

Government for the land at the time he made his final proof, that was considered by you as a loan merely for the purpose of paying the Government for the land, was it not? [431]

A. Well, not wholly. It would include, it was usually large enough to include some other expenses.

Q. Some other expenses?

A. Some other expenses besides this $400; it would be usually more than $400."

I understood that this money was to be used for the purpose of paying the Government for the land and the other incidental expenses in connection with taking it up. It was not to be used for any private or personal purposes.

"Q. None whatever?

A. No."

I do not recall any agreement or understanding to the effect that if there should be any money over that money was to come back. I do not remember whether I ever got any money back from James D. Baker arising out of the fact that he filed originally on 160 acres and only proved up on eighty of them. I loaned money to one or two of these entrymen and the money was returned for some reason that they did not carry out their final proof, or at least their proof was not accepted. In the case of Jackson M. Self there was something about some money but it was too long ago to remember distinctly.

"Q. I will state the record shows he filed on 160 acres of land and he got patent to 120; that would

(Testimony of George E. Tuman.)

be 40 acres that he did not get patent to. When you closed up your transaction with him you paid him $100 for his claim over and above his expenses, did you not?

A. I think I paid him about that amount; I would [432] not be certain, however, just the exact amount.

Q. Then there was this sum of money coming back from the Government for the extra 40 acres?

A. Well, there would be some money coming back to me if he deposited $400 and only got 120 acres—there would be some money coming back.

Q. Would this be his money or your money?

A. Mine, I guess."

The deed from Mr. Self to Gregory called for 160 acres and the final proof was made on 160 acres and the sale was 160 acres, but the patent was only for 120 acres.

"Q. Did you consider that money was yours, that extra $100? A. I think we got it back.

Q. You considered it your money?

A. I think so."

I do not know whether the money came to me personally or to Mr. Holbrook. Mr. Holbrook and I got the $100; I do not know whether Mr. Self gave us an order for it or not. I think Mr. Self considered it our money. He made no protest. I think the first knowledge that I got of the $100 coming back was from Mr. Self.

Witness is shown a letter which he identifies as being written by him.

(Testimony of George E. Tuman.)

I assume that it is true if I wrote it in my letter that Mr. Self wrote me that some land which he had located had been cancelled and the Government had offered to refund him the purchase money within a certain time. I don't recall [433] receiving any notice prior to the notice given me by Mr. Self. The letter is admitted in evidence and is as follows:

"Fruitvale, Cal., January 16, 1908.

Mr. Solon Jacks,
Prattville, Cal.

Dear Sir:

Some time ago Mr. Self wrote me that some land which he had located, had been cancelled and the Government had offered to refund him the purchase money within a certain time. I at once wired him and also wrote requesting him to send the papers with which he had been served, down here to have them examined by an attorney, but we have not heard from him further in the matter. I wish that you would see him and get him to take some action before it is too late to make the application for the refunding of the money.

Very truly,
G. E. TUMAN."

Solon Jacks to whom this letter is addressed is a son-in-law of Mr. Self. I often discussed with Mr. Holbrook the taking up of this land and the manner in which I had taken it up. He was cognizant of all that I did in that matter. I discussed with Mr. Holbrook the question of the criminal

(Testimony of George E. Tuman.)

statute of limitations of the United States, that it ran against a conspiracy to defraud the Government within three years from the last overt act. I do not think I ever discussed with him whether the receiving of the patent from the Government might not be considered [434] as the last overt act in connection with the conspiracy. I have discussed with Mr. Holbrook as to when the statute of limitations will begin to run on a charge of conspiracy to obtain land by fraud from the United States but did not discuss as to whether or not the patent would be the last act which would start the statute running. That was just a general conversation as to the general fact only that there was a statute of limitations running against fraud against the United States and that the period of the statute was three years. I think that all we discussed or talked about in the course of the general conversation was that it was three years after the act. Now, I do not know what would constitute an overt act. I do not believe I am competent to say that. I never heard that the issuance of the patent might be considered part of the conspiracy.

"Q. Did you ever discuss whether or not the final proof and the getting of the deed from the entryman might be considered as part of a conspiracy?

A. No, I don't think I did, would not specifically; it was only generally.

All that I remember is that we had a conversation. I do not remember how late I discussed this

(Testimony of George E. Tuman.)

with him. I think I first talked it over with him about 1898. I was well acquainted with him then and we had talked about timber and stone claims in a general conversation some time about that time. I might have discussed it with him [435] between 1901 and '02 when he was out to see me or when I was in the city; very likely I did. I do not recall any specific instance at the present time. I did not discuss it with the Curtises or the Collinses. I think I have spoken of the time when the civil statute of limitations would run against a patent obtained by fraud with him. I could not fix the date when I had that discussion. I do not think I ever discussed it with the Curtises. I think I discussed it with Mr. Holbrook. I think that was in 1907, after he had left the corporation. There was no reason for the conversation at that time; it was only a general conversation. I think it was about the same time that we were discussing the Wheelock and Branley entries. I don't remember whether it was the same conversation or not. I don't recall discussing the criminal statute at that time. I had always kept Mr. Holbrook informed of these entries that were being made and of loans to the people, all that he was in possession of at all times. I never discussed as to whether or not those entries had been taken up fraudulently.

"Q. You never had any discussion along that line?

"A. No, I could not have had."

(Testimony of George E. Tuman.)

Cross-examination.

Either Mr. Holbrook or I got this $100. I do not know who received it; I just suppose from that letter that I got it myself but I am not sure now.

Testimony of George E. Tuman, for Defendants.

GEORGE E. TUMAN, called for the defendants.

I was never interviewed by any of the special agents or anybody representing themselves to be special [436] agents of the Government from the Land Office.

Q. In response to your cross-examination yesterday something was said in relation to your having discussed the statute of limitations with Mr. T. D. Collins. Did you ever discuss it with Mr. F. S. Collins, that you remember of, the statute of limitations, I mean in the civil branch of this matter?

A. Yes."

I did not discuss it with J. G. Curtis or D. G. Curtis or with C. H. Holbrook, Jr. I have also discussed it with Mr. Shurtleff. As far as I can recall they were all after the beginning of this action, that is particularly the discussions with E. S. Collins and with T. D. Collins. I do not recall any specific instance before these suits were started, with Mr. Shurtleff but I would not be so certain about it with him, whether I had or not before these suits were begun. I did discuss it with Mr. C. H. Holbrook, Sr.; I don't think I ever discussed it with Mr. T. D. Collins.

Testimony of George E. Tuman, for Complainant (Recalled).

GEORGE E. TUMAN, recalled for the United States.

In order to get a settlement with Mr. Holbrook as to the profits which he and I derived out of our dealing in lands in Plumas County I had to bring a suit against him. The suit was settled by compromise, it was never tried.

"Q. What were the terms under which you settled that suit?

A. Two hundred shares of stock of the Curtis, Collins & Holbrook Co. and $10,000 payable either in cash or an agreement to pay $10,000 inside of a year." [437]

I think there was a formal instrument of settlement drawn up at the time. I do not know where it is now. I do not know whether I have a copy of it. I have not seen it among my papers for a number of years. A third person brought about the settlement.

"Q. Who negotiated this settlement?

A. Mr. T. D. Collins was the principal one.

Q. How did he come to negotiate the settlement?

A. I think he wanted to settle the differences between Mr. Holbrook and myself; he acted in a friendly capacity to both parties.

Q. He made it his business to try and settle the matter? A. He did; yes.

Q. Did you ask him to before he started out or

(Testimony of George E. Tuman.)

did he come and volunteer his services?

A. I told both him and E. S. Collins after the suit was started my side of the trouble, and Mr. T. D. Collins came out on one of his trips to the west, to the Coast, some time after the suit was started, I don't know how long, and took the matter up and effected a settlement."

I could not say whether he came out to the coast for that specific purpose or not. I did not ask him to come out for that purpose.

Mr. PIER.—"Q. Now, who did this basis of settlement come from? Did you make this proposition or did Holbrook make it, or did Collins get Holbrook to make it? Who brought the proposition to you, or was it your proposition or somebody else's proposition?

A. Mr. T. D. Collins brought the proposition to me stating it came in the form of an offer of compromise [438] from Mr. Holbrook.

Q. What did he state in regard to whether you ought to accept it or not?

A. He advised me to accept it."

My recollection is that in the contract of settlement Mr. Holbrook acknowledged that I had an equal share in the agreement of settlement and was an equal partner with him in the business of acquiring the timber lands in Plumas County.

Mr. PIER.—"Q. You are named as one of the executors in the will of T. D. Collins, are you not?

A. I think I was a witness, that is all.

Mr. SHURTLEFF.—If you want an admission

(Testimony of George E. Tuman.)

of that kind, I don't know whether we ought to go into Mr. Collins' will or not; suppose he did.

Mr. PIER.—It shows that Mr. Tuman's interests are more or less tied up in Mr. Collins' at the present time.

The MASTER.—It would only show that he was an executor; not that he was tied up with him at all; but such a matter if it were a fact would have no influence on this litigation at all, because it would be a very wise selection of a man having so much timber land in California to put such a man in charge of his will.

Mr. PIER.—There is a trust created under the form of the will, as I understand it, by which—

Mr. SHURTLEFF.—(Intg.) You are very badly misinformed.

Mr. PIER.—If that is not the fact, I would like to know. [439]

Mr. SHURTLEFF.—I am not going to produce the will. Those things are somewhat sacred. I don't think that you have a right to go into that matter.

The MASTER.—I do not want to hear anything about it. You can note your exception.

Mr. PIER.—I will note my exception.

I cannot recall whether I had anything to do with the negotiations of the purchase of the land of Carrie L. Ross. I secured her address in the east. Whether I did more than that I cannot recall. I do not remember writing her any letters. I did not make the sale.

(Testimony of George E. Tuman.)

"Q. Now, Mr. Tuman, you will recall at the time we had our first conversation in regard to this matter in my office before you had testified in this case I asked you this question, as to where the money came from with which you acquired the timber and stone lands in Plumas County, and you made a statement to the effect that you preferred not to answer that question until you were required to do so under oath, but you thought you knew where the money came from. Do you remember that?

A. I remember making the answer that I preferred to make the statement on the stand. I cannot recall the other part of the answer that you spoke of.

Q. Don't you recall stating that you thought—

A. That I knew where the money came from?

Q. That you thought you were pretty certain you knew where the money came from but you did not care to make a statement on that before you went on the stand? [440]

A. I don't remember about that portion of it.

Q. You remember you did not want to state where the money came from?

A. I did state that.

Q. And you remember also in connection with the deeds, I asked you why you took the title to these timber and stone lands in the name of Gregory, and you said to me, "Don't you know?" and laughed about it at the time, and I said, "I think I know but I want your statement," and you went on to state that you did not care to tell me about

(Testimony of George E. Tuman.)

that until you went on the stand?

A. I think I refused to say, yes.

Q. The conversation was about as I stated it, on that point, was it not? A. Yes. [441]

Testimony of Edward L. Cooksey, for Complainant.

EDWARD L. COOKSEY, called as a witness for complainant, testified as follows:

My name is Edward Leroy Cooksey; 47 years of age; carpenter by occupation; residence, Sacramento, Cal.

In 1902 I lived at Taylorville, Plumas County, California, and in that year I made entry for a piece of timber land. The land was shown to me by Mr. J. E. Remick, the gentleman sitting here in court. After I looked at the land I went to Susanville to file on it. I was accompanied on that trip by John Huntington and possibly by my wife and also his wife. I know that on one occasion we all went over there. I do not remember whether or not Remick was along on that first trip to Susanville. After we arrived in Susanville I went to the Land Office and made an application to file on the land and paid the Land Office some money but I could not say exactly how much, somewhere about $15. I could not say just how long I stayed in Susanville on that trip. I know I did not stop at the hotel but I stopped with my brother-in-law, J. E. Bass. After I had finished my business in Susanville I went back to Taylorville and stayed there until time to make proof. I made my final

(Testimony of Edward L. Cooksey.)

proof in Susanville and it seems to me that I was accompanied on that trip by John Huntington and L. C. Remick. I do not remember whether we went to Susanville in my rig or not. I know I had a rig. When [442] I made my proof at Susanville I paid the Land Office about $400.

"Q. What did you do with the land after you made final proof on it?

A. After I made my final proof?

Q. Yes.

A. Some time after that I sold it.

Q. Who did you sell it to?

A. To Mr. J. E. Remick"

I got I should judge in the neighborhood of $550 I could not say exactly. I do not remember who was present when I executed the deed but I rather think it must have been the notary public in the town, although I am not sure now.

"Do you remember going before Mr. Hall and executing an instrument of any kind, signing any papers before Mr. Hall—you know Mr. Hall, don't you?

A. Oh, yes.

Q. Do you remember going before him and signing any papers?

A. It seems to be a blank in my mind, my mind is blank in that respect; I don't remember Mr. Hall being present, but it more than likely was because he was a notary public.

Q. Who suggested that you take up this land, Mr. Cooksey?

(Testimony of Edward L. Cooksey.)

A. Mr. J. E. Remick, in the first place, was the first man I talked to about it." [443]

He asked me if I wanted to take up a piece of land and I told him that I didn't know whether I wanted to take up land or not, whether it would be any advantage to me to take up land. I asked him where the timber land was situated and he said he knew of some good timber land on the divide between the American and Indian Valleys and if I wanted to take up a claim it would be a good chance to locate.

"Q. Did he say anything to you as to how much you could get if you took up a timber claim, how much profit there would be in it?

"A. I believe he told me that if I wanted to sell the timber land that I would be able to sell it,—that he could find a purchaser.

"Q. Did he tell you how much profit there would be in it?

"A. Well, now, I can't say as to that; it was rumored around over the country how much profit there would be in these timber claims.

"Q. Did Mr. Remick tell you that you could probably made $100 over and above your expenses if you took it up?

"A. It seems to me that he told me that if I wanted to sell the timber land that I could make that much.

"Q. Did he say anything to you about whether or not you could get your expenses if you wanted

(Testimony of Edward L. Cooksey.)

to take up a claim, be paid the expense of taking it up?

"A. I won't be certain as to that. That is a point that I won't be exactly sure about."

I do not think that we discussed the question of expense very thoroughly. I knew what the expense was of taking up a timber claim. It would be in the neighborhood of $434 or $440, I think. It seems to me there was some talk about the expenses but I cannot exactly remember what it was. [444] Anyway I told him I would not, that I did not want to take up a timber claim on such a proposition exactly.

"Q. You did not want to take it up? What I want to get at is what that proposition was, Mr. Cooksey?

A. Well, that anybody else should pay all my expenses, or that I might be going wrong, or something of that kind, if there was no way of doing that.

Q. There must have been some way, or you would not have refused that proposition, wasn't there?

A. Of course there might be a way, but I do not think we talked of it.

Q. Didn't you have some discussion that you didn't have the ready money with which to pay for the timber claim to the Government; that is, you had property, but you did not have the ready money with which to pay the Government.

A. He told me that if I wanted the money to take up a timber claim that I could borrow the money."

(Testimony of Edward L. Cooksey.)

To the best of my knowledge I had two conversations with Mr. Remick about the same time. I had not made up my mind the first time exactly and it was within a day or two that we talked more about the case; that was all. When we talked it over the first time he told me that I would be able to hire the money or borrow the money to take up a timber claim.

"Q. Do you know whether or not between that time and the time you made your final proof, you had any talk with him about money matters in connection with timber claims?

A. I don't believe that I ever saw Mr. Remick between the time I went to Susanville to locate and prove up; I don't remember of seeing him; I might have; he lives right across the street from me, but I was not [445] in town all the time.

Q. Your work kept you at the shingle-mill, most of the time?

A. A good deal of the time. I did not come to town very often.

Q. When you came to prove up on the land, did you have enough money of your own to pay for it?

A. No, I did not, not in my possession.

Q. Where did you get the money with which to pay the Government for the land?

A. I gave my note for this money.

Q. Whom did you give your note to?

A. L. C. Lewis, I believe, I would not be positive about the L. C. part of it; it was a man by the name of Lewis.

(Testimony of Edward L. Cooksey.)

Q. Did you give any security for that?

A. A mortgage on some mining claims.

Q. Where did you execute this note and mortgage?

A. As to that I could not exactly say, only that it was in some attorney's office in Susanville.

Q. Who handed you the money?

A. I believe it was Mr. Remick, L. C., if I am not wrong. I do not think he handed me the money in the attorney's office I do not remember where he gave it to me. It might have been in the Emerson Hotel, but I would not be certain. The money was handed me in United States gold coin. I did not tell L. C. Remick on the trip to Susanville that I needed any money to prove up on the land. I would not say even that Remick went over there with me because I [446] do not remember that he did. The money was handed me after I executed the mortgage and after I signed the note.

Q. Then you went to the Land Office and used this money to pay for the land; is that correct?

A. Yes."

At the time I executed the deeds when I sold the land to Mr. J. E. Remick, in the first place I demanded my note and sufficient money as I understood to amount to about $100.

Q. One hundred dollars of money?

A. I think that was the amount; I would not be certain now; I think it was $100."

I was reimbursed for the $13 or $14 that I had paid to the Land Office; in the first place I could

(Testimony of Edward L. Cooksey.)

not say whether it was $100 or what the amount was that I received but it was so that I realized $100 above my expenses. I do not know whether or not the mortgage that I gave as security for the note that I executed had been recorded.

"Q. Did Mr. Remick come to you or did you go to Mr. Remick to sell the land?

A. It appears to me that he came to me. I would not be sure as to that. I think that he came to me. Those things I can't just remember.

Q. At that time did you have any dickering about the price that you were to be paid for the land?

A. It seems to me—I don't remember whether we had any dickering with it or not; it seems as though—I can't say as to whether we did or not, that is to be sure.

Q. Between the time that you made final proof [447] and the time that you executed this deed, that is, between the second time you went to Susanville and the time you executed the deed, did you talk to anybody else about selling the land at all?

A. I would not be certain as to that, whether I did or not."

I talked over timber land a good deal but I do not remember whether or not I talked to anybody about selling the land. I had found out that there was a company in the market for the land besides Mr. Remick but they were on the other side of the ridge, mostly, on Diamond Mountain.

"Q. Did you make any particular effort to find

(Testimony of Edward L. Cooksey.)

out whether anybody would buy that timber claim besides Mr. Remick?

A. No, I did not.

Q. You stated, Mr. Cooksey, that you did not wish to accept Mr. Remick's proposition, but you decided that you were willing to take up the land, but you were not willing to accept Mr. Remick's proposition when he made it to you; is that correct? A. Mr. Remick's proposition?

Q. Yes. As you stated it, you stated that you were not willing to accept Mr. Remick's proposition, that is what you told Mr. Remick?

A. The proposition—which proposition was it?

Q. That is to take up the land and get your expense money and deed the land to $100?

A. I told him if I could borrow the money I would [448] locate the land on those terms.

Q. If you could borrow the money. Did he tell you whether or not you could borrow the money?

A. He told me that I could borrow the money." He knew where I could borrow it.

Q. Did he charge you anything for locating you on the land? A. I believe not.

Q. Did he ever mention any fee, about what the expense would be of locating on the land, I mean just showing you the land? A. No.

Q. Did you ever expect to pay him anything for showing you the land?

A. I did not. Allow me to correct myself in one way, unless he demanded it. If he should ever have

(Testimony of Edward L. Cooksey.)

demanded it afterwards, I surely would have had to pay him.

Q. Did you consider at the time that you were under any obligation to pay him anything for showing you the land?

A. Well, not unless he demanded it.

Q. Was there any discussion about that, that he might demand any pay?

A. No, there was not.

Q. There was nothing said about any location fee at all? A. No, there was not."

I did not know just what it was worth to locate [449] people on timber land at that time but they generally charged $40 for locating you on agricultural land that is on the other side.

Q. You did know it was a valuable service, did you not?

A. Yes, unless they were willing to render their service free, why I know it was valuable,—it is valuable anyway.

Q. Would you have taken up this timber land at that time if you had not had the assurance of Mr. Remick that there was somebody that would purchase the land as soon as you had made proof on it?

A. Please state that question again. (Last question repeated by the reporter.) Well, I don't believe I would; not saying just as soon as I made proof on it, but if I could not have sold the timber land, I would not have located it.

Q. If you could not have sold it?

(Testimony of Edward L. Cooksey.)

A. If I could not have sold it after locating it, I would not have.

Cross-examination.

Mr. SHURTLEFF.—"Q. I understand you to say that you had two conversations with Mr. Remick at home before you went out to look at the land?

A. Two conversations."

In the first conversation he simply approached me on the proposition and discussed the matter of paying my [450] expenses, etc., and I told him that I would see him again. In the second conversation I told him that I would take up the land on the terms, provided that I could borrow money to take up the timber land.

Q. That was the terms?

A. That is the idea."

I did not have any talk with Mr. Remick at either conversation relative to who would purchase the land after I took it up. I did not know whom I was to sell the timber land to. He said he could find me a purchaser.

"Q. Did you agree at that time to sell to that purchaser?

A. I did not make any—no, there was no binding agreement that I could understand at that time."

He said he was certain he could find a purchaser and that is as far as it went. I took his word for it.

Q. And based upon that statement of Mr. Remick's in regard to selling it, taken in connection with the further statement if you could not have disposed of it you would not have taken it up—

(Testimony of Edward L. Cooksey.)

A. (Intg.) I would not have taken it up unless I thought I could have made something out of my timber claim. I first looked at the land and then made my application and between the time that I filed my affidavit of application and the time that I made final proof I have no recollection of any talk with anybody about it other than talking with my wife. When I went out on the mountain to look at the [451] land I used my own rig and I do not remember of having had any expenses on the first trip to Susanville aside from what I paid the Land Office, as I stayed with J. E. Bass. I had money of my own and as far as the expenses was concerned, I do not remember of any expense any more than the necessary expenses which I assuredly would have to pay myself. With regard to the publication notice I got a receipt through either the Plumas "National Bulletin" or the "Independent," one or the other, stating that they had received the money for the publication, that is my best recollection as to that. It seems to me if I remember right, that we paid the money into the Land Office and that I got a receipt, as I have stated. I have a vague recollection of getting a receipt somewhere, I do not know whether it came from the Land Office or from the publishers.

Redirect Examination.

Mr. PIER.—"Q. Mr. Cooksey, you did not pay any money through to the newspaper yourself direct, did you? A. No.

Q. You never paid any money, but you did get the notice from the paper? A. Yes, sir.

(Testimony of Edward L. Cooksey.)

I got the notice of it some way, either through a receipt or some way. I remember knowing that the publication was paid. That is as near as I can recollect it as it was so long ago, about ten years.

Testimony of Edward L. Cooksey, for Complainant (In Rebuttal).

Called for the United States in rebuttal.

Mr. PIER.—"Q. Do you remember on your testimony [452] before that you said that Mr. Remick came to you and made a proposition that if you took up some timber land there was $100 and expenses in it, and he would locate you on the timber land. That was the general outline of the proposition?

A. Yes.

Q. Now, do you remember of ever telling that to anyone—first of all I will ask you, did he ask you if your wife would take up a claim?

A. Well, I will tell you what he did say to me in this way, if I recollect right, to the best of my recollection, he asked me,—my wife's name is Bertha. He said, "Does Bertha want to take up a claim?" I says, "I don't know whether she does or not." I don't believe that he ever asked me anything about it afterwards. But my wife, I asked my wife, and she said she did not want to take up a claim.

Q. Did you ever tell him that your wife would not take up a claim?

A. As I say, I don't think afterwards he ever asked me anything about it.

Q. Did you ever tell anybody about the fact that

(Testimony of Edward L. Cooksey.)

you were locating a piece of timber land?

A. No, I don't think I ever did. I don't think I talked on the subject, not to my recollection.

Q. Did you ever tell anyone there that you recall that Mr. Remick was locating people on timber land?

A. Not that I can recollect of. I don't think that anybody even asked me. I don't think I even talked [453] with anybody about it.

Q. And you did not tell them what you were getting out of it?

A. No, I did not tell them. [454]

Testimony of John Huntington, for Complainant.

JOHN HUNTINGTON, called as a witness for complainant, testified as follows:

My name is John Huntington; age, 36 years; occupation, blacksmith; residence, Taylorville, Plumas County, Cal. In the year 1902 I took up some land in Plumas County near Taylorville.

"Q. Who went out to look at that land with you?

A. Mr. Remick showed us the land.

Q. Which Mr. Remick, Mr. Ned Remick, who is sitting here in the courtroom? A. Yes."

After I had looked at the land I went to Susanville to make my filing. I was accompanied on that trip by my wife and also by Mr. Ed. Cooksey and his wife. I don't remember where we stayed the night we arrived in Susanville, whether it was at the Emerson Hotel or down at Bass', Cooksey's brother-in-law. I remember that I paid some money at the Land Office on that trip. It was not as much as $150, but I don't

(Testimony of John Huntington.)

remember how much I paid. I think it was something around $13, $14 or $15, I returned to Taylorville after making my filing. When it came time to make final proof I made another trip to Susanville accompanied by Ed. Cooksey and Ned Remick, but I don't remember where I stayed over night on that trip. I think it was the Emerson Hotel. When I made my proof I paid some money to the Land Office. [455]

"Q. Do you remember how much you paid them on that trip? A. Four hundred dollars.

After making my final proof I executed a deed transferring the land.

"Q. Were you given any money at the time you executed the deed? A. No, sir.

Q. Were you given any money subsequently after you made final proof, were you given any more money for your land—did you get any more money for your land after that?

A. After I made my final proof?

Q. Yes, do you know whether or not you were ever given any more money at all on account of the land?

A. Besides this $400?

Q. Yes, besides this $400. A. Yes.

Q. How much? A. I think it was $100.

Q. You think it was $100; who handed you the $100? A. Mr. Remick.

Q. Now, just tell us in your own words, Mr. Huntington, how you came to take up this land, who first spoke to you about taking up the land, and just how you happened to take it up.

(Testimony of John Huntington.)

A. Mr. Remick, I think he is the gentleman who spoke to me."

I did not go to him in the first place. He came [456] to me, I think it was in Taylorville, and asked me if I ever 'thought of taking a piece of timber land or if I had ever used my timber right.' That is as near as I can remember it.

The MASTER.—"Q. What did you say?

A. I told him no, at the time, that I would think the matter over. After I told Mr. Remick that I had not used my timber right he told me to think the matter over but I do not think he asked me if I wanted to take up timber land that he would show me some land. He know that I had been over the timber. We had been on the timber together and he told me what piece of timber land to take up at that time. I think he told me that if I took up a piece of timber land I could expect to get about $100 out of it but I don't think he said anything about my expenses being paid for taking up the land, I think he told me how much money I would have to have to pay the Government for the land, what the land was worth and what I would get for it. I think he told me it would cost $415 to buy the land from the Government.

"Q. Did you have $415 of your own money at that time that you could put in timber land?

A. I borrowed some.

Q. I know, but did you have $415 at that time that you could put in timber land? A. No."

I think I told Mr. Remick at the time that I did

(Testimony of John Huntington.)

[457] not have the money to take up the land and he told me that he would see me again and I think he also said that he would loan it to me.

"Q. He said he would loan it to you? A. Yes.

Q. What did you tell him when he told you that, do you remember?

A. I think I told him that the only security that I could give, get for him, was on some mining claims.

"Q. Did you decide then whether or not you would take up a timber claim—did you decide at that time?

A. I think I did. The first time that Remick came to talk to me about the timber claim and asked me if I had used my timber right and told me that I could make $100 by taking up a piece of timber land, that he would advance or loan me the money to pay the Government for the land, I do not think I agreed to take up a timber claim. I told him that I would see him again and in a week or two after that time I saw him again and I told him I would give him a note.

"Q. Did you tell him you would take up the land?

A. Yes."

I did not tell him I would deed the land after I took it up.

"Q. When you took it up did you expect to keep the land yourself, when you took it up at all?

A. No, sir. I expected to take up the land and sell it.

"Q. In accordance with your conversation with Mr. Remick; is that the idea? A. Yes. [458]

The MASTER.—There was nothing said in the conversation about selling the land.

(Testimony of John Huntington.)

Mr. PIER.—Was there anything said in this conversation that you had with Mr. Remick about deeding the land to anybody?

A. I don't think so.

Q. Was anything said about selling the land to anybody? A. I don't think there was.

"Q. Where were you to get the $100, how were you to make the $100, Mr. Huntington—where was your $100 to come in, the $100 profit to you?

A. I thought that my $100 was to come in after I paid him back this $400 and got my mining ground back.

Q. Were they to advance you $400 and then you get your money back and then give you the $100 besides? A. Yes.

Q. What were you to do?

A. I was to deed the land.

Q. All this took place before you went out and looked at the land; is that correct?

A. I would not be sure. I would not be sure whether it took place at that time or not.

Q. Did you have any talk with him after you took up the land about the timber land?

A. I think so."

Ihad two conversations with Remick and after the second conversation I told him that I thought I would [459] take up some land. I do not think that Remick went out with me to look at the land after I talked about it, but I would not be sure.

"Q. Did Mr. Remick give you the description of the land you were to take up? A. Yes."

(Testimony of John Huntington.)

Mr. Remick knew that I was familiar with the land up there as I had been on this particular piece of land with him before I ever talked with him at all about taking up land.

"Q. Now, these conversations that you had with him, these two conversations about taking up the timber land, these took place before you went to Susanville the first time, did they not?

A. I think they were.

"Q. When you went to Susanville the first time did you pay your own expenses?

A. Yes, I think I paid all my expenses.

Q. In paying your expenses did you use your own money? A. I used some of it.

Q. Did you get money from any place else besides your own money on first trip?

A. I think I borrowed the money.

Q. You think you borrowed the money?

A. I borrowed the money.

Q. Who did you borrow it from?

A. I borrowed it from Remick."

I think it was somewhere in the neighborhood of $25 but I would not be sure.

"Q. Did you give Mr. Remick a note for it at that time? [460]

A. Now, I would not be sure whether I did or not.

Q. What is your best impression of it, do you remember signing any note at all?

A. Yes, I think I did.

Q. Do you remember signing any note at all?

A. Yes, I think I did.

(Testimony of John Huntington.)

Q. Do you remember signing a note for $25?

A. No.

The MASTER.—Q. It may have been part of the note for the larger amount; is that the idea?

Mr. PIER.—What I want to find out is whether he signed a note at the time he got this first $25?

A. I don't think there were. I don't think there were any papers signed there.

Q. Do you know how that money was handed to you? A. I think it was handed to me by him.

I don't remember whether the money was all in gold or whether some of it was paper.

Q. Where was the money handed to you?

A. I think it was handed to me in Taylorville."

When I got to Susanville I used part of this money this $25 to pay the Land Office for the publication fees. The $13, $14 or $15 that I spoke about in the early part of my testimony I used from this money.

Q. And after you came back and went to Susanville again did you have the money with which to pay for your land when you left Taylorville the second time and went to Susanville? A. No, sir.

[461]

Q. Where did you expect to get the money?

A. In Susanville.

Q. Who did you expect to get it from?

A. I expected to get it from Lem.

Q. You expected to get it from Lem Remick?

A. Yes.

Q. Who told you that Lem Remick would furnish you the money? A. I think Ned told me.

(Testimony of John Huntington.)

Q. When did he tell you that?

A. Before I went over to make my proof.

Q. Now, after you had gotten over to Susanville did you get $400 over there, were you given $400?

A. Yes.

Q. Who handed you the $400?

A. His brother.

Q. Lem Remick? A. Lem."

I was handed $400 in gold coin in the Emerson Hotel.

"Q. Did you give any note for it?

A. I think there was some papers signed for it.

Q. There were some papers signed?

A. That has slipped my mind.

Q. Now Mr. Huntington, what I want to know is this: Just what do you remember about those papers; were there any papers signed that you remember?

A. Well, I don't remember whether there was.

Q. You don't remember signing any papers at all?

[462] A. No, I don't right at that time.

Q. Did you sign any papers while you were in Susanville outside of the Land Office?

A. I don't know."

When I went to the Land Office I used the $400 that Mr. Remick had given me to pay the Government for the land.

"Q. Were you given any money for expenses on that trip? The second trip?

A. I don't know whether I was given any or not,

Q. You don't know whether you were given anything at that time or not?

(Testimony of John Huntington.)

A. No, but I don't think I was."

When I went over to Susanville on the second trip I think I had a rig from Hargrave, the liveryman in Taylorville, but I could not tell you who hired the rig.

"Q. Were there just three of you in the rig when you went over? A. Yes."

When I sold the land and signed the deed, W. W. Hall and Mr. Remick were present.

"Q. Did Mr. Remick give you some money at that time? A. Yes, I think he did.

Q. How much did he give you?

A. One hundred dollars.

Q. Was that $100 clear profit to you, Mr. Huntington? [463] A. I think it was.

Q. Whatever expense you had been out was this $25 that he advanced you in the first place, you had paid all your expenses out of that; is that correct?

A. I think that was counted in.

Q. You think your expenses were all within that $25? A. Yes.

Q. Was anything said about the $400 at that time that had been advanced to you at the time the $100 was paid, anything said about that $400 at that time?

A. I don't know, I couldn't tell you.

Q. Do you know whether there was anything said about the $25 that had been advanced to you before?

A. I don't think there was.

Q. Did you consider that you were under obligations to Mr. Remick for the $400 that he loaned you at the Emerson Hotel?

(Testimony of John Huntington.)

A. I don't think I was."

I don't think there was ever anything said about my paying Mr. Remick anything for giving me the description of the land and he never made any demand upon me for having given me the description.

"Q. And you really never expected to pay him anything for doing that, did you, for giving you that description of land? A. I did not think so. [464]

Q. When you started out Mr. Huntington, did you expect to do just the very things that you did do in carrying out this proposition? Maybe that question is asking you to review too much. That is, did you take up this land just in accordance with your conversation that you first had with Mr. Remick?

A. I think I did.

Q. Did you expect when you started out to take up this land to keep it for yourself at all?

A. No, sir.

Q. What did you expect that you were going to do with the land?

A. I expected to sell it.

Q. Who did you expect to sell it to?

A. I expected to sell it to Mr. Remick, I think that was it.

Q. How much did you expect to get at the time you started out? A. All told?

Q. Yes, how much did you expect to get at the time you started out?

A. I think it was the amount and expenses.

Q. The $100? A. Yes.

Q. Anything else? A. And expenses.

(Testimony of John Huntington.)

Q. All expenses? A. Yes. [465]

Q. That was in accordance with Mr. Remick's proposition to you, in accordance with his offer to you at the time he first came to you, Mr. Huntington, was it not? A. I think it was.

Q. That is, it was in accordance with the conversation you had before you first went to Susanville, you got this idea all from conversations that you had with Mr. Remick before you first went to Susanville?

A. I think I did, yes, I think so."

I do not remember where Lem Remick got the money in Susanville which he gave to me but I think he got it at the bank. I do not remember whether or not Lem Remick told me that he was going to the bank. He went in the bank alone but I was under the impression that he got the money at the bank.

"Q. Do you know whether Lem Remick paid your expenses on that second trip, or not?

A. I think he did."

I think he paid our expenses on the second trip.

"Q.When you signed that deed finally and gave it to Mr. Remick, and he gave you $100, that was just as you understood that you were to do when you started out, was it not?

A. I think it was.

Cross-examination.

Mr. SHURTLEFF.—"Q. Will you please repeat again for me the conversation that you had with Mr. Remick prior [466] to your going to Susanville to make your first location?

(Testimony of John Huntington.)

A. I don't think I can, they are all gone out of my memory."

He came to me and talked with me about taking up land but I cannot tell you just what time, it was before I took it up.

"Q. Now he asked you if you had ever used your timber right, your timber and stone right, did he not?

A. Yes.

Q. And then what else did he say in relation to your stone and timber right?

A. He asked me if I wanted to take a piece up, a timber claim."

I could not repeat what was said just now but I was to realize practically $100 out of it.

"Q. Did he promise at that time to pay you $100 for the claim? A. I think he did.

Q. What did he say?

A. Well, I can't just now tell you what he said at the time.

Q. At that time did you agree to sell it to him after you took it up?

A. Yes, I think that was our conversation.

Q. This was all before you went to look at the land? A. Yes, I think it was."

I remember that when I went to Susanville to make [467] application for the land I filed an affidavit with the application but I don't remember the statements in the affidavit.

"Q. Do you remember making an affidavit, a portion of which was as follows: 'That I have made no other application under said act; that I do not apply

(Testimony of John Huntington.)

to purchase the land above described on speculation, but in good faith to appropriate it to my own exclusive use and benefit, and that I have not, directly or indirectly, made any agreement or contract, or in any way or manner, with any person or persons whomsoever, by which the title I may acquire from the Government of the United States may inure in whole or in part to the benefit of any person except myself.'

A. I think that was the substance of it.

Q. How did you come to make an affidavit containing the statement that I have read and at the same time you had already promised to sell the land to Mr. Remick when you got it. You had then made an agreement, hadn't you, when you took that affidavit? A. Yes, but I don't know—

Q. (Intg.) You don't know what?

The MASTER.—He can think of that during the recess. We will take a recess now until 2 P. M.

Cross-examination Resumed.

"Q. The statements in this affidavit were not the facts; is that the idea?

A. I don't think they were all the facts. [468]

Q. You had made, you say, and you are certain that you had made an agreement before you filed?

A. I think so.

Q. Do you remember going to the Land Office and making your final proof? A. Yes.

Q. Do you remember whether or not you were sworn at that time to answer questions?

A. I don't think I was.

(Testimony of John Huntington.)

Q. I will ask you if you remember of having been asked this question and having made the following answer thereto: "Do you know of any capitalist or company which is offering to purchase timber land in the vicinity of this entry? If so who are they and how did you know of them?" To which you answered, no. That is correct, is it? A. I think so.

At that time I did not know of anybody, any capitalists or land buyers in that community who were buying land.

"Q. Did you know who Mr. Remick represented?

A. He was representing Tuman, as far as I thought.

Q. Do you remember having been asked this question and made the following answer thereto: 'Has any person offered to purchase this land after you acquired title? If so, who, and for what amount? A. No.' Do you remember being asked that question and giving that answer?

A. I think so, I won't be positive.

Q. Do you remember having been asked this question and having given the following answer: 'Did you pay [469] out of your own individual funds all the expenses in connection with making this filing, and do you expect to pay for the land with your own money? A. I did, I do.'

A. I think so.

Q. Do you remember having been asked this question and giving the following answer: "Where did you get the money with which to pay for the land, and how long have you had same in your actual possession?

(Testimony of John Huntington.)

A. I mortgaged a mine for it, about 24 hours.

A. Yes, something to that effect; I would not be positive.

Q. Had you mortgaged your mine?

A. I think so. I think that I had mortgaged the mine."

I would not be sure whether I signed a note there or not.

"Q. What was the mortgage to secure—was it not given to secure a note?

A. It was given to secure a note for this money, as near as I can remember.

Q. But you don't think that you signed a note.

A. I would not be positive.

Q. You have testified that you did not expect to return this money; am I right about that, that you did not expect to return it to Mr. Remick or whomsoever gave it to you?

A. I thought that, as far as I can remember. I would return the timber land. [470]

Q. That you were to return it or not to return it.

Mr. PIER.—He said he was to return the timber land.

Q. Return the timber land. You were to return the timber land. What for? (Addressing the Reporter.) Note the witness does not answer.

I do not remember that I ever discussed this case with Mr. White. I have seen him but I do not think that I was ever interviewed by him.

Q. Do you know Mr. George Hall. A. Yes."

I knew or understood he was employed by the Gov-

(Testimony of John Huntington.)

ernment but I don't think that I ever discussed the case with him. I have no recollection of ever having met a special agent by the name of Snell, but I know and was interviewed by a special agent by the name of Rathbun.

"Q. Suppose it should transpire that you did actually sign a note for that amount of money, a note payable to a man by the name of Lewis, what would you say then as to your obligation to return that money that had been given to you? Would you say that you would have to pay the note?

A. Not if I had lost it, I don't think I would.

Q. If you lost what? A. The note.

Q. If you lost what? A. The note.

Q. What do you mean by losing the note? [471]

A. If they could not produce the note they could not collect the money, could they?

The MASTER.—When you give notes to people, that takes the place of the money that you have; you would not take the notes? A. No.

Q. You could not very well lose it. That is what counsel means.

Mr. SHURTLEFF.—Q. You remember nothing about having given a note as I remember you to say?

A. I remember something about a note.

But I have no recollection of giving a note payable to a man by the name of S. J. Lewis.

Redirect.

Mr. PIER.—Q. Do you know anybody by the name of Lewis?

I don't think I do.

Testimony of John Huntington, for Complainant (Recalled in Rebuttal).

Recalled for the United States in rebuttal.

Mr. PIER.—Mr. Huntington, you were here before as a witness in this case. A. Yes.

Q. At the time you took up your land and the time Mr. Remick made the proposition that you stated here, to take up the land, did he make any proposition to you in relation to your wife's taking up land?

A. Yes.

Q. What was the proposition? [472]

A. To take up the land on the same basis that I would take it up.

Q. What did you do in regard to that proposition?

A. Well, I told him that I would think the matter over and talk it over with my wife, which I did, and I told her she had better keep out of it.

Q. What did you tell Mr. Remick?

A. I told Mr. Remick that I did not think my wife would take up any land."

I do not recollect that I ever told in the community that I was taking up land for Mr. Remick or that Mr. Remick was locating me on land. I might have said to somebody that I took up a claim but not that I know of.

Q. Did Mr. Remick ask you to go around and tell people he was locating people on land?

A. Not that I know of.

Q. Did you make it a business to tell anybody that you were taking up land with Mr. Remick?

A. No."

(Testimony of John Huntington.)

I might have said that Mr. Remick was locating people on land and giving them $100 and expenses for taking it up but I don't recall of ever making a proposition of that kind to anyone.

Q. Did you ever go out on an expedition with Mr. Remick or did he ask you to in which there were located a number of placer claims? [473]

A. Yes.

Mr. SHURTLEFF.—I object to that upon the ground it is immaterial, irrelevant and incompetent and not rebuttal.

The MASTER.—I think it is not rebuttal, Mr Pier.

The objection will be sustained. You can make your offer of proof now. State what you expect to prove so that it will be in the record.

Mr. PIER.—What I expect to prove by Mr. Huntington is this, that he went out with Mr. Ned Remick and Mr. Lem Remick, Mr. Elam, Mr. George Cooksey, Mr. Dugal McMillan, and there were several others in the party, and they went out and located a number of placer claims in the timber belt near Greenville out on what is known as Wolf Creek, and filed a number of placer claims there, joint placer claims, eight entrymen or partners could file on it and make a claim of 160 acres under the Placer Claim Act, and in that way they covered a lot of timber land for the purpose of holding the same, and that this expedition was engineered by Mr. Ned Remick, gotten up by him and engineered by him.

The MASTER.—It is proposed to prove that these claims went to patent?

(Testimony of John Huntington.)

Mr. PIER.—No, these placer claims did not go to patent. They were gotten up for that purpose, and at the time they were gotten up there was no idea there was any placer mining there at all; it was purely for the purpose of getting them for the timber.

The MASTER.—I presume that is enough. The offer is rejected. [474]

Cross-examination.

Mr. SHURTLEFF.—"Q. You don't remember whether or not you told anyone in that country that you had taken up, filed on a timber entry; you say you may have and may not have?

A. Yes, but I never peddled that proposition that to nobody, to no one whatever, as far as I know about peddling it. I might have, as I said spoke about it to somebody like I would in talking to you on the subject, and I might have said, "well, he is locating men on timber land." That would have been as far as it went.

Q. It might have gone that far?

A. It might have gone that far. That is as far as it went with me.

Redirect.

Mr. PIER.—"Q. Would you have told him that you were getting $100 or what you did, or that Ned Remick was getting $100 for what you did?

A. I don't think I ever told a soul what I was getting, or what was to be got, because as a fact I don't think I ever had a talk with anybody over the proposition. [475]

Testimony of Gertrude Terrell Luetkens, for Complainant.

GERTRUDE TERRELL LUETKENS, called as a witness for complainant, testified as follows:

I reside in Austin, Nevada. In 1902 I took up some timber land in Plumas County. At that time my name was Gertie Terrell. At that time I was a widow and before that I was Miss Branley. At that time I resided in Greenville and was staying with my father.

"Q. That entry was made on the 16th of June, 1902, and you filed on your land in Susanville, did you not? A. Yes."

Before I filed on the land I rode over it a little ways. I went out to see the land with Mr. Wheelock and his wife. I think Mr. Heppe was along. I went out to look at some timber land before I filed at the land office. Before I went out to look at the land I had a talk with Mr Heppe in respect to taking up the timber land. He told me if I would take up this land I would receive $100.

"Q. You were to get $100 and what were you to do with the land when you took it up? Did he say what you were to do with the land? Were you to keep the land?

"A. No, I was not to keep it.

"Q. Was there anything else said besides giving you $100? A. And my expenses would be paid.

"Q. Your expenses would be paid while you were taking up the land? [476] A. Yes.

(Testimony of Gertrude Terrell Luetkens.)

Q. Did he say anything about your being charged anything for being shown the land?

A. No, not a thing.

Q. When he made that offer to you telling you that there would be $100 and expenses for taking up the land, what did you say to that proposition, do you remember? Did you make any reply to him in regard to that? Just tell us what that conversation was, in which he offered you the $100 and expenses, as near as you can remember, what he said and what you said, that is, the substance of it?

A. He told me if I would take up this land I would receive $100.

The MASTER.—"Q. Is that all?

Mr. PIER.—"Q. Did you say anything to him in reply to that?

A. I told him I would take it up.

Q. You told him you would take it up?

A. Yes. I don't remember how long it was after that before he had me go out and look at the land. It was a short time. After looking at the land we stayed at Prattville over night and went to Susanville the next day to file on the land. After filling on the land we returned to Greenville. I paid none of my expenses on that trip. Mr. Heppe furnished me the money to pay them. [477] I made my final proof at the Land Office in Susanville. On that trip I went with Mr. Wheelock and his wife. I don't think anybody else was along. On that trip my expenses were paid the same way. I did not pay my expenses out of my own pocket. I paid the Land

(Testimony of Gertrude Terrell Luetkens.)

Office about $400 at the time I made my final proof. I don't know where I got the $400. I didn't have it when I left Greenville. I got it while I was in Susanville. I don't remember where I got it in Susanville but I think at the bank. I went to the bank while I was in Susanville, with Mr. and Mrs. Wheelock. I don't think anybody else went to the bank with us at that time. I did not have that much money in the bank, of my own. I did not use a cent of my own money in paying for the land. After making final proof I returned to Greenville. I did not keep the land; I disposed of it to somebody. I don't remember who I talked to when I disposed of the land. I don't know who I handed the deed to. At the time I executed the deed I got $100. I don't know who handed me the $100. I have forgotten whether or not it was Mr. Heppe who handed it to me. It was handed to me in Greenville.

Q. You executed the deed before J. R. Murray, a notary public in Plumas County—do you know Mr. Murray?

A. Yes. I remember going to Mr. Murray's office. Mr. Heppe told me to go there. I got my money at Mr. Murray's office. I don't remember who was at Murray's at the time I executed [478] the deed. I cannot recall whether Mr. Murray handed me the money or someone else. I don't recall whether any third person was present besides Mr. Murray and myself.

Q. Do you recall what Mr. Heppe said when he told you to go to Mr. Murray's office?

(Testimony of Gertrude Terrell Luetkens.)

A. He told me if I would go there I could get my money.

Q. That is all? A. Yes.

Q. Did he say for what?

A. Well, I knew I was going to get this $100 for taking up the land; at least he told me I would.

Cross-examination.

Mr. SHURTLEFF.—"Q. Have you talked with Mr. Heppe about this case since you were subpoenaed as a witness? A. No, sir.

Q. Never discussed it with him at all?

A. I have talked with him; yes.

Q. Where did you talk with him?

A. I have just been joshing about it, that is all.

Q. What did he say?

A. He told me to tell the truth about it, whatever I was going to say.

Q. Mr. Heppe told you that?

A. Yes. I have known Mr. Heppe for a long time. My first conversation with Mr. Heppe, before I went to look at the [479] land, was in Greenville. He told me if I would take up the land I would get $100. He didn't tell me where I would get it from. I didn't tell him then that when I took it up I would sell it to him for $100.

Q. What reply or response did you make to that when he said if you took it up you could make $100?

A. I told him I would.

Q. What did you mean by that? What impression did you intend to convey to Mr. Heppe when you said that you would take it up? What did you mean?

(Testimony of Gertrude Terrell Luetkens.)

Did you mean to give him to understand when you took it up you would let him have it or someone have it for $100? A. Yes.

Q. You felt after having that talk with him before you took it up that you were obligated to let him have it when you took it up? A. Yes.

Q. Does this look like your signature—of course you will bear in mind that what is white would be black and black would be white? A. Yes.

Q. I wish you would just glance your eyes over that especially this printed part (showing witness a certified copy of her application entry). Have you seen a copy of that document since you made it?

A. No, not that I remember of."

I have discussed this case with the District Attorney. [480] Mr. White. a Special Agent came up to see me at one time.

"Q. That was just a subpoena. Now, Mrs Luetkens, in this paper that you filed there and swore to you say 'That I do not apply to purchase the land above described on speculation, but in good faith to appropriate it to my own exclusive use and benefit, and that I have not, directly or indirectly, made any agreement or contract, or in any way or manner, with any person or persons whomsoever, by which the title I may acquire from the Government of the United States may inure in whole or in part to the benefit of any person except myself.' You are testifying now that you had practically agreed in the first conversation that you had, and before you went to look at the land and before you made this paper, that you

(Testimony of Gertrude Terrell Luetkens.)

had given Mr. Heppe to understand that he could have it when you got it? A. Yes.

Q. So that the statement that you made here was not true? A. No, sir.

Q. How did you come to make that statement? You knew yourself it was not true, didn't you, Mrs. Luetkens? A. Yes, but I wanted the money.

Q. You wanted the money? A. Yes.

Redirect Examination.

Mr. PIER.—"Q. At the time Mr. Heppe came to you, you needed the money, didn't you, Mrs. Luetkens. [481] A. Yes."

Recross-examination.

Mr. SHURTLEFF.—"Q. You did not get it then, did you?

A. No, but I got it shortly afterwards."

Further Redirect Examination.

Between the time that Mr. Heppe first came to me and the time I signed the deed there had been no change in my financial condition. I had no more money up to the time I sold the land that I had at the time of my initial application.

(Then follows chain of title from Gertie Terrell to Charles E Gregory and from Charles E. Gregory to the Curtis, Collins and Holbrook Company.)

[482]

Testimony of Rebecca Heppe, for Complainant.

REBECCA HEPPE, called as a witness for complainant, testified as follows:

My name is Rebecca Heppe. At the present

(Testimony of Rebecca Heppe.)

time I live at Greenville. I am the wife of John H. Heppe, and have been married to him going on 12 years. I lived all my married life around Greenville and Prattville. I remember taking up some timber land in 1902. Before I took it up I went out and looked at it. It was nearest to Prattville. I don't remember just exactly where it was. When I went to look at the land I went with Mr. Heppe, Minerva S. Brown, and Willard C. Brown. At that time Willard C. Brown lived in Greenville. He was a clerk in J. R. Murray's drug-store. When I took up the land, I expected to sell it.

Q. Did you have any idea who you were going to sell it to?

A. Well, I knew that some company was going to get it.

Q. How much were you to get for your land?

A. One hundred dollars.

Q. Who did you have your conversations with in regard to the taking up of the land?

A. Mr. Heppe.

Q. That is with your husband? A. Yes.

Q. When you went out to look at the land you have stated that he took you out and showed you the land? A. Yes.

Q. At the time when you took it up were the finances [483] of your family such that you could have invested $400 in timber land?

A. No."

After looking at the land I went home. We filed

(Testimony of Rebecca Heppe.)

on the land in Susanville and we went there again to make final proof. When I made final proof I paid the Land Office for the land. Mr. Heppe gave me the money for that. After I got title to the land I did not keep it. I deeded it to Mr. Tuman. That is, I signed a paper for Mr. Tuman and he gave me $100; and that was just as I understood it when I started out. Mr. Heppe told me to deed the land to Mr. Tuman.

Cross-examination.

Mr. SHURTLEFF.—"Q. You said, Mrs. Heppe, when you took up this land you knew it was going to some company? A. Yes.

Q. Did you know that of your own knowledge?

A. I knew it.

Q. How did you get that knowledge?

A. Mr. Heppe told me so.

Q. All you know is what Mr. Heppe told you?

A. Well, I knew he was working for a company.

Q. What company?

A. The Curtis, Collins & Holbrook Company.

Q. At the time you took up this land?

A. That is the way I understood it; yes.

Q. That is the way you understood it, that Mr. [484] Heppe was working for the Curtis, Collins & Holbrook Company at the time you took up this land? A. Yes.

Q. On June 23, 1902. I will tell you, Mrs. Heppe, there was no such company at that time?

A. Well, I understood that there was a Curtis,

(Testimony of Rebecca Heppe.)

Collins & Holbrook Company.

Q. Who told you that? A. Mr. Heppe.

Q. Who was present when he told you that?

A. Just myself; we talked it over.

Q. Then when you took it up you understood you were to deed the land to the Curtis, Collins & Holbrook Company.

A. I understood it that way.

Q. When you signed it, did you make any inquiry as to whether you were doing that thing or not? A. I never inquired anything.

Q. Just did what your husband told you to?

A. Yes."

I had just seen Mr. C. H. Holbrook, Sr. I did not know him personally and never talked with him. I have seen C. H. Holbrook, Jr. I have never talked to him. I don't remember of ever seeing T. D. Collins or F. S. Collins, or J. G. or D. G. Curtis.

Q. Then all you know about this land being taken up for the company is what your husband told you? A. No.

Q. No one else ever told you anything of the kind? [485] A. No. I signed the deeds for Mr. Tuman. He was present and gave me the money, himself, when I signed the deed. I don't remember the date of the deed. Prior to the taking up of this land and making my location, I never talked with anyone else other than my husband about taking up the land. I don't remember now just what he said to me about taking it up.

(Testimony of Rebecca Heppe.)

Q. Did he say, you take it up and then you are to deed it to whomsoever I tell you to?

A. I don't remember.

Q. What did you do—just simply sign these papers and go along and take up the land without any particular discussion about it and then sell it?

A. Well,. he told me to take up this land and I was to get $100 for it.

Q. Is that all he told you?

A. Well, I don't remember.

Q. He didn't tell you where you were to get it from?

A. He told me where I was to get the land.

Q. The money? A. What do you mean?

Q. What I want to know is as to whether at the time you talked with your husband you promised him as to what you would do with the property?

A. Well, I would sell the property.

Q. What did you say about selling it?

A. I was to get $100 for it.

Q. Mr. Heppe told you that? A. Yes. [486]

Q. And get it from whom? A. Mr. Tuman."

Then follows chain of title from Rebecca Heppe to Charles E. Gregory and from Charles E. Gregory to the Curtis, Collins and Holbrook Company. [487]

Testimony of Henrietta Tuman, for Complainant.

HENRIETTA TUMAN, called as a witness for complainant, testified as follows:

George E. Tuman is my son. At the present

(Testimony of Henrietta Tuman.)

time I reside at Haywards, and have been for eight months. I took up a timber claim in Plumas County in 1902. At that time I was living at Corning, California. During that summer I was in Plumas County, at the time I took up this timber claim, about a week. My son advised me to take it then in Plumas County. He asked me if I would like to take up a claim and told me that I could. I filed on the land in Susanville. I made my final proof at the same place. When I left Corning I went to Chico and from Chico to Prattville, and I met my son at Prattville. I saw the timber land before I filed on it. My son took me out to the land in a buggy. After looking at the land we returned to Prattville and from Prattville went to Susanville. The first trip to Susanville I went with my son in a conveyance. He took me over the first time. On the first trip to the Land Office, when I filed on the land, I didn't pay anything. When I paid I paid it all at once. I don't remember which time it really was. I think very likely it was on the second trip. After filing on the land I returned to Prattville and returned to Corning in a day or two. [488] When I made final proof my husband took me from Corning to Chico in a buggy and from there I went on a stage, the same as before, to Prattville, where I met my son. At that time I went from Susanville in a conveyance. I might have gone in a stage the first time; I cannot just say. At any rate I went on a stage once from Prattville to Susanville and the other time in a

(Testimony of Henrietta Tuman.)

private conveyance. I made my final proof at the land office in Susanville, and paid them $400, as I recollect it. I don't remember whether there were any odd dollars added, or not. The money was in gold. The money that I paid the Land Office was just my own individual money. I didn't bring the money from Corning; I had it in the bank in Susanville. My son got the money for me and fetched it to the hotel. I took the money that he gave me, in the hotel, to the Land Office and paid the money. We lived at Corning for past six months after that. I returned to Corning by way of Prattville. I don't know how long I stayed at Prattville on that trip. I didn't sell the land myself. My son was doing our business then, and I told him to do the best he could with the land. My husband at that time was an invalid and my son took care of the land for me and looked after it. I don't remember how much I made out of the land. I never did know. I never asked him what he got for the land, because, of course, we were in business together, and I never did take up anything like that; I didn't ask him about it at all; just for him to do the best he could. [489] I don't know how much profit I made out of the land. I don't remember where I signed the deed. It was so long ago. I have done some other business since then, and it seems to me I have got the things mixed up.

Q. Do you remember whether or not you executed any papers in Los Gatos?

(Testimony of Henrietta Tuman.)

A. Well, I don't remember that I did for that; of course, I have for other things, and I can't say what I done about that business. I remember Mr. Peck, a notary in Los Gatos. I remember signing a deed before him with my husband, Edward Tuman. The deed that I signed before Mr. Peck was town property there, I think. At that time I owned town property in Los Gatos. I don't remember when I went to Los Gatos.

Q. You made your final proof in September, 1902, the latter part of September, and in January, 1903, the deed was acknowledged before Mr. Peck of Los Gatos, so that it was about four months after you made your final proof that you executed the deed at Los Gatos. Now, do you remember about how long it was after you made your final proof and returned to Corning that you went to Los Gatos, or whether you went there before Christmas or not?

A. Yes, I think we went there some time in the last of October."

I don't think I can say that I have any recollection at all of executing a deed to the piece of timber land.

Q. When did you first consider that you did not [490] own the property any more, Mrs. Tuman?

A. Well, I did not consider very much about it; it was in my son's hands to take care of, and I, of course, had other work to do, that I did not feel like caring for it, and I asked him if he would take care of it and he said he would; he was doing all

(Testimony of Henrietta Tuman.)

of our business and so, of course, I did not have to have any thought for it.

Q. At that time what was your son's business, Mrs. Tuman?

A. I suppose it was dealing in lands, and mines, and doing that kind of work, selling real estate, I believe.

Q. He was dealing particularly in timber land, was he not?

A. Yes, real estate; that is land. My son never told me about what he was doing around Prattville at that time, particularly, that I can tell anything about. He told me he was buying timber land and selling it.

Q. What did you expect to do with the timber land, when you got it, Mrs. Tuman?

A. Well, I had not made any calculations what I would do, only that I thought it would be worth more by buying it and keeping it, that it would be more valuable afterwards.

Q. Keeping it would be more valuable?

A. Well, yes, I thought, that was my idea, to get the timber and have it, and by keeping it it would be more valuable afterwards, that is all I ever did think [491] about it.

In taking up this timber land I was, in one sense, following my son's advice. He told me it would be an advantage for me to do it.

Q. Do you know whether or not you ever got the money, the profit, out of this land?

A. Yes, I think I have fully got it, in every way.

(Testimony of Henrietta Tuman.)

Q. You haven't any idea how much it was?

A. No, because our dealings were not that close; we were one family, all the same, that is, my son and my own family. That is as far as our money was concerned, as he had our money that we had to work with.

Q. Now, Mrs. Tuman, why did you keep your money deposited over in Susanville, in the bank over there?

A. Well, because my son had to have some money there, I suppose, and I had money, and I thought it was better that he should have it there so that I would not save to carry it for one thing; we had money in the bank at that time, family money.

I never checked against the Susanville bank. We had money in Red Bluff and we could get money there. This money at Susanville was really under the direction of my son.

Q. Your son's money?

A. Yes, it was under his direction, because he was doing business and I expected him to have it there for me. [492] The money was in my son's name.

The MASTER.—Q. It was deposited in the bank in Mr. Tuman's name, your son's name?

A. Yes, he could draw on the bank; he had put it there—I could not describe at present how he had it there, but it was my own money that I paid for the land. I know it was not my son's money that he handed me. I know it was the family money.

Q. Were you interested in his operations in pur-

(Testimony of Henrietta Tuman.)

chasing mines and timber land?

A. No, not in particular, only in just the way of wishing him to succeed in business, that is all.

Q. What I have reference to, Mrs. Tuman, is this: Did you put your money at your son's disposal to operate in timber and mining land?

A. Well, yes; his father put money in the first timber dealings that he did, it was his own, and his father's money. When Mr. Tuman started out in business my husband backed him with money and we just left the money in my son's charge and the profits he made were family profits and the losses he made were family losses, so that the money I used was family money. My son never told me where he could sell the land. He told me he probably could get a sale for it afterwards at any time almost after I got a deed for it. When the land was sold, whatever money came in was just put into the family account. I took the land up for the family benefit. I let him do the rest of it as [493] he could do it to our advantage and his own. At the time I took up the land I took it up with the idea of turning it over to him to take care of it in the course of his timber land dealings. I don't know as that was just an understanding. I don't know as there was anything said about it any more then he said he would look after it and would do better, of course, than I would be able to do, because I was not in the business. He had the business and that would be all. I don't know as there was any talking about it that way. I don't know

(Testimony of Henrietta Tuman.)

how much money I personally loaned my son to carry on this timber business with. The money I let him have was my own and my husband's, together; I did not have any money before I was married to amount to very much. I didn't inherit any money after I was married. Perhaps I had as much as $1,000 when I was married; I could not tell you; it is so long ago. I think the money that we let Mr. Tuman have, I would have to call money that had been acquired by Mr. Tuman and myself after we were married. My son had a share in the family money after he was old enough to go into business. His father gave him a share. I don't know what my son's share in the family money was.

Cross-examination.

During this entire transaction I had confidence in my son in his dealings with me. I don't remember as [494] I have had any conversation with him as to how I could sell it, or where I could sell it, or as to whom I could sell it to.

Q. But you say that you did expect at all times to be guided by his advice in the disposition of that land?

A. Well, it was because he understood, and I did not, that is all.

(Then follows chain of title from Henrietta Tuman to Charles E. Gregory, and from Charles E. Gregory to the Curtis, Collins and Holbrook Company. [495]

Testimony of Reuben J. Mitchell, for Complainant.

REUBEN J. MITCHELL, called as a witness for complainant, testified as follows:

My name is Reuben J. Mitchell; age, 50 years; occupation laborer; residence, Red Bluff, California. I remember making a filing for some timber land in the Susanville Land District during the summer of 1902.

Q. You filed on that on the 30th of August, 1902. that is the date the application shows? A. Yes.

Q. Did you go and look at the land before you filed on it?

A. No. The way I happened to be in Susanville at that time was that I had been sick for a couple of years. I bought a team and wagon and went to the mountains for my health. I was travelling through the mountains and stopped at Susanville for the summer. I got the description of the land that I filed on from Jack Heppe. I think I had been in Susanville a couple of weeks when I got this statement as I started out early in June and did not go home until late in October. I do not remember just the time I was in Susanville but I was there 60 or 70 days and probably longer.

Q. Now, Mr. Mitchell, will you tell us in your own words how you came to file on this piece of timber land?

A. I had been camping through the mountains, and I thought I would go into Susanville. I was stopping at Prattville. We stopped there two or three days, I and a fellow that was with me, and I had

(Testimony of Reuben J. Mitchell.)

an old friend by the [496] name of Gardenhire that had been and was living at the time in Prattville for the summer, he was there for his health too; I asked for him and they said he had went to Susanville; so after staying two or three days we pulled up and started for Susanville; on the way in there we met them going by; I did not have any chance to talk with them; the two rigs passed each other, and he said, "How do you do?" and I think I said, "How do you do?" After I had been in Susanville a couple of days I seen in the paper his notification of filing, and the witnesses, and I heard somebody talking about he had taken up a timber claim, and I heard somebody talking about taking up timber and one thing and another, and so I wrote a letter to Gardenhire and I asked him what was doing in this timber if there was anything doing I would like to use my claim; so I didn't receive any letter from him, I don't know exactly how long it was, and one day Heppe came to me, unknown to me, with a letter of introduction from Gardenhire. I had never seen Heppe before that time that I know of. Heppe said, "Do you want to take up some timber?" and I said "Yes," and he asked me about the money. He said, "Have you got some money to take it up?" I had some money at the time and I said "Yes," and I said, "But between now and that time I might lose this money playing poker, gambling and I may be a little short. I do not expect to lose it all," and I said, "maybe I will be a little short later on, I

(Testimony of Reuben J. Mitchell.)

may not have enough. Could I borrow that money; could I abandon my claim and wait until I had got some [497] money and take up another claim?" I knew they could abandon homestead claims and take up another one and he said, "No," I could not do that, but he said, "I think we can fix that all right, about the money part of it. I probably could loan it to you," I think he said. So we took the filing, or the papers that he gave me, and I said, "Now, what will I do with this?" He said, "Take it up into the Land Office and tell them you want to file on a piece of timber, and he handed me these numbers. I asked for a little further instructions and he said, "You go on up there, you will find the way, you are certainly intelligent enough to follow directions; you will find that out after you get up there." So I went up and filed on the piece that he gave me to file on, and then after about 30 or 40 days I got a notification, I was stopping with Taylor, the Receiver of the Land Office, and he came to me and says, "Mr. Mitchell, that piece of land you filed on the other day a fellow came in and proved up on it, we made a mistake in the office, and you will have to find another piece." He said, "It is our mistake."

I waited around about two or three weeks when a man came in one night. I think I was playing cards with some people or a game of billiards and I did not have much, and he says, "Your name is Mitchell," and I said "Yes." He said, "I would like to see you a minute." We went over to the corner of the saloon and he handed me, he says, "I

(Testimony of Reuben J. Mitchell.)

was told, I think, by my friend Gardenhire, to hand you that slip of paper." So I tried to get a little [498] information from him and he seemed to be in a great hurry, he would not talk with me at all, would not answer me, just talked about Mr. Gardenhire, and said he did not know anything about this, and said, "You will excuse me, I am in a great hurry," and he flew right out.

"Q. Did he tell you what his name was?

A. I think he introduced himself when he came to me as Tuman."

I am not sure whether he introduced himself to me or whether I asked someone else in the saloon after he went out if they knew what his name was and I think I was told his name was Tuman or he might have introduced himself as Tuman. It was a long time ago and I don't remember.

"Q. Was anything said to you by Heppe at any time, as to what you would be able to dispose of your claim for?

A. I think we discussed that, and I think he said $100."

At the time I first started out in this proposition I think I would have put my own money in it if I had had it as everybody around there seemed to be putting their money in.

Q. What did you think you were going to do at the time you went up and filed on the land—what did you think you were going to do with the timber claim?

A. I thought I would sell it and realize $100.

(Testimony of Reuben J. Mitchell.)

Q. You expected that the person whom you sold it to would be the same person that Heppe represented or Mr. Heppe himself, did you? [499]

A. Yes, I thought so.

Q. When you were given this slip of paper by this man in the saloon, when he gave you another description, what did you do with that?

A. I took it up to the office and filed on it like I did before. Mr. Taylor told me, as they had made the mistake, he says, 'Now if you can prove up in the course of 10 days,' or something of that kind—substitute, I believe, was the word he used, 'those numbers and we will allow you to prove up in 60 days.'

Q. Do you know whether you had to go and extend the time to prove up or were you allowed to prove up within the 60 days of the time of your original filing?

A. No, I had to take a new 60 days."

At the time I made my final proof, which was on November 18, 1902, I was back in Red Bluff. I had taken this 60 days and if I had waited, the storms come on in the mountains, and I had to cross over the mountains from one side to the other, and if I stopped until the 18th of November I would be snowed in with the rig, so I went on home, put up my team and waited until the time came, took the train and went over to Susanville from Red Bluff around by Reno.

"Q. At that time did you pay the Land Office anything for your land? A. I did.

Q. How much was paid to the Land Office by you?

(Testimony of Reuben J. Mitchell.)

A. I don't remember exactly, it was $400 or so. [500]

Q. Do you remember whether at the time you made your first filing you paid the Land Office any money at that time?

A. No. I remember that was about the only instruction that I remember of Heppe giving me. He was very guarded in all his answers to my questions. He seemed to kind of assume that I knew more about this, that I knew all about it in fact. So, I think he says to me, "Now, when you get up there, the only thing they are liable to ask you is if you want to pay for the advertisement," and he says, "You don't have to pay for that now, you say no; I will pay that when I make final settlement."

"Q. Where did you get the $400 that you paid for the land with?

A. Well, between the time that we had first talked of this, why I had lost the money, I don't remember just exactly how much it was, but I know that when I left the Bluffs I had more than enough to take up the land and pay for everything."

I came through Reno and Reno was wide open at that time and I played some faro bank and played very unlucky and when I got to Susanville I was short.

"Q. Where did you get the money to make up the difference—first, tell us what occurred after you got to Susanville to make your final proof.

A. That night it was very cold, there was a blizzard on, and not being very used to cold and not

(Testimony of Reuben J. Mitchell.)

being very well at that time, I got off at the first saloon. It seems that Heppe of course was naturally expecting me there, so I don't remember whether we talked any that night or whether I told him I had lost this money, I most likely [501] did; but my impression is I talked to him the next morning, but I guess I am mistaken in that, I guess I must have told him that night, I probably spoke to him and let him know how much short I was; so the next morning, I think he handed me what I was short.

Q. Where did he hand that to you?

A. Now, that I have been trying to think; I don't know whether it was in the hotel, in the hallway going upstairs or whether it was in the door of the hallway, but it was somewhere along in there.

The MASTER.—Q. Who handed it to you?

A. I think Heppe.

Mr. PIER.—Q. Then you went up and made your final proof; who went with you?

A. Heppe and Arthur Elam.

Q. After you made your final proof what did you do?

A. Well, we came downstairs, and I think Heppe said, 'You go over to Barry's office there and he will fix that thing up, he will fix that up'; I know he made just some such remark as that; he did not say, "Go over and sign that over"—he said 'Go over to Barry's, when you come to fix that up, go over to Barry's,' or something of that kind.

Q. And Barry was a lawyer, was he, at that time?

A. Yes.'

(Testimony of Reuben J. Mitchell.)

A. Yes." When I went over to Barry's office there was no one in the house but the stenographer and she said Mr. Barry was out and I don't think I saw him for two or three hours. [502]

"Q. Were you given a slip of paper to take over there with the name of the person to whom you were to convey the land? A. No, sir.

Q. You just went over there and told him who you were; is that the idea? A. That is it.

Q. Did you have to tell him what the description of the land was? A. No, I think not."

I signed a paper conveying the land to somebody.

"Q. Did you get any money while you were there?

A. No, sir.

Q. Did you get any money for the land?

A. Yes, Heppe and I, I think, went up into my room, and he paid me; we made a settlement, I don't remember now just exactly how much it was, but I think I got $100 and my expenses.

Q. That is all those expenses you were out for coming down from Red Bluff? A. Yes."

I do not think that between the time that Heppe came and talked to me and the time when I met him in Susanville when I made my final proof that I met Jack Heppe. The first conversation that I had with Heppe there was somethin said in regard to the profit that I might expect to get out of the land and I asked him what could a man get for this land after he had taken it up and he said, [503] 'Well, you will probably get $100. That is about what they were paying for them." He didn't tell me what kind

(Testimony of Reuben J. Mitchell.)

of timber land he was giving me a description of or whether it would bring a good price or a poor price. That was not discussed.

Q. Tell us just what you expected to do with the timber land the first time you filed on it.

A. I expected to sell it for $100, I guess.

Q. Did you have any idea as to who would be the purchaser?

A. Well, I naturally supposed that it would be either Heppe or possibly some friend of his, something of that kind.

Q. Did you consider that you were under any obligations to Heppe at all at that time to convey the land to him or some of his friends?

A. Well, yes, I kind of felt that I was a little obligated; that is, I had not promised to do so, but I felt that I should convey the land to Heppe or some of his friends. I think I would have gone to him and told him if somebody had offered to give me more, I would have told him and given him a chance before I disposed of the land to someone else. I think there was something said about a location fee, but I did not expect to pay any fees, I do not remember now. There was a fee figured in there somewhere or other, but I could not say now what it was or how it was. I do not consider that I owed Heppe anything at the time he gave me the description of the land. I cannot remember how much money I got from Heppe at the time I made [504] final proof. I am all mixed up on that. I stopped in Sacramento and lost a little money there but I lost

(Testimony of Reuben J. Mitchell.)

more money in Reno. I did not give Heppe a note for the money that he let me have the morning that I made my final proof and I did not expect to. The question of a note was not discussed.

"Q. Did you ever see this piece of land that you took up at all? A. No, sir."

Heppe told me that I would need two witnesses. He says, "You can use George Gardenhire and myself and you can use Elam," and those were the names that I handed in. Gardenhire, Elam and Heppe were witnesses, but the fourth I can't remember.

Cross-examination.

Mr. SHURTLEFF.—Q. Mr. Mitchell, how long have you lived in Tehama County?

A. I might say all my life; my folks came there in '55."

In the conversation that I had with Mr. Heppe the night that he came to me with a letter of introduction from Gardenhire, I do not think there was anything said about selling the land to Mr. Heppe or anyone that he might bring after I had acquired the land. I did not make any contract, promise or agreement with anyone that I remember of touching the sale of this land. I do not remember ever speaking with anybody else about selling it except with Heppe. It kind of seemed that I would do it, but there was no talk that I would. [505] I had not the remotest idea whether Heppe was representing himself or someone else.

Q. As I understand you to say, suppose someone

(Testimony of Reuben J. Mitchell.)

had offered you a higher price than Heppe was willing to give you, and you had called his attention to that fact, and he said, "Well, I can't pay you that price," would you then have felt at liberty to sell to that person offering you a better price?

A. I intended to, sir.

Redirect Examination.

I do not remember of ever having said that I would deed the land to anyone. The only thing that was said in regard to that was, that applied to that deed, he said to go and see Barry or go to Barry and fix that up, or something of that description.

"Q. Fix that up. What did you understand to be meant by that?

A. That meant to transfer the property to him.

Q. But there had been no discussion about your transferring your property up to that time or not, except at Susanville, as you remember it?

A. No, You see we had not met until late that night, 10 o'clock I guess, or after, it might have been 11 o'clock; the stage don't get in there until 9:30, and we had a very short talk in the saloon that night, and about as short a one the next morning.

Q. When you came to get the money, collect the money for the land, how did you figure the amount that was [506] coming to you—did you discuss as to whether or not you would get $100 or over $100?

A. Yes, we had a discussion on that, upstairs. I says, "Well here, I have got expenses too," and I figured in the expenses.

Q. Was there any discussion between you and him

(Testimony of Reuben J. Mitchell.)

as to the amount that you should get clear over and above all expenses at that time?

A. No, only what I have said in the saloon, as I remember it, about selling this land, after I had acquired it, how much could I make—I don't remember the words now that were used, but that was the conclusion of the talk, I was to receive $100.

Q. You were to receive $100?

A. Yes. You see I was on the ground; there was no expenses at that time, and this expense proposition cropped up later; I had no talk with Tuman, you see, because he left so abruptly, and I don't remember seeing Heppe any more until the day of Final Proof."

I have no recollection of being notified that I would be furnished expenses to make the trip from Red Bluff to Susanville and we had some discussion at the time we settled up about the expenses and Heppe said, "All right; figure in the expenses." At the time I made my first application there was no need to figure on expenses as I would have remained in Susanville until final proof except for the blunder of the Land Office in the description of the land that I entered. [507]

Recross-examination.

Mr. SHURTLEFF.—Q. You have just testified, Mr. Mitchell, that in that conversation with Mr. Heppe in the saloon when you asked what there would be in it for you or a question to that effect, you said that you should receive $100. What do

(Testimony of Reuben J. Mitchell.)

you mean by the word "receive"—that would be your profit in it?

A. That would be my profit in it, what I would make; I don't know as I used the word "receive" at that time, but I don't remember how we arrived at that thing. He was very guarded in all of his answers.

Q. The substance is that you understood that you could make $100 profit if you took up the land?

A. Yes.

Mr. PIER.—Q. The discussion as to the $100 profit, that took place at what conversation?

A. That took place, I think, at the very first conversation."

We did not discuss the matter of the $100 profit again until I deeded the land and received the $100. [508]

Testimony of Henry Dodge Morley, for Complainant.

HENRY DODGE MORLEY, called as a witness for complainant, testified as follows:

My name is Henry Dodge Morley; age, 40 years; residence, Chico, California. occupation, common laborer. In 1902 I was living in Chico but I went over with another fellow to Susanville to visit the fair and while there I took up some timber land. I did not look at the timber land before filing. Jack Heppe gave me the numbers of the land that I was to file on and went with me up to the Land Office. I saw the land before I made final proof. In go-

(Testimony of Henry Dodge Morley.)

ing back to Susanville as we went over the road Heppe pointed it out to me and said, "there is some of the land now. We are crossing it now."

After filing on the land I returned to Prattville and when it came time to make final proof I made my proof before the County Clerk of Plumas County at Quincy. After I finished my proof I went over to the hotel and met Mr. Elam. We had a little talk there and then we went over to the recorder's office and I signed over the deed and then went back to the hotel and turned it over to him and he gave me $100 and what expense money I was out, I think probably something like $15 or $20. The way I happened to take up this timber land was that one night when I was in Susanville in the Johnson House, Jack Heppe came to me and asked me if I had ever used my timber right and I told him I had not and he says, "Do you want to make $100?" I says, "I don't know but what I do; it ought to come in handy," something [509] to that effect. He said if I wanted to take up a timber claim I could make $100 and I told him I was willing to do that but that I did not have the money to prove up with, and he said he would fix that all right and he gave me the numbers of the land and we went up and filed on it and he told me that when the time came to prove up, "You be there in Quincy and we will see that the rest of it is there," and when I got off at Quincy when finally proving up, Heppe and Elam were there to meet me. We went over to the Plumas House and

(Testimony of Henry Dodge Morley.)

he deposited for my room, a week or four days, whatever it might have been I was there, and the next morning Elam handed me $20 and told me I had better go into the newspaper office and pay the advertising bill. It was something in the neighborhood of $17.50 or $18 and I came back and gave him the change that was left. Then we returned to the hotel and when it came time to make proof he took me up to his room and handed me $400 in paper money and went with me as one of my witnesses to make final proof.

"Q. What were you to do to get the $100 at that time?

A. Well, as near as I could figure it out in my own mind I was simply donating my timber claim for the price of 100 bucks.

Q. Did you understand that you were to turn over your timber land after you had taken up the land, after you had made your final proof, did you understand you were to turn that over to whomsoever Heppe might direct?

A. That is the only way I could figure that I could get the money to prove up with, I had to turn it [510] over to him or some of his friends that furnished the money.

Q. Now, at the time you made your affidavit to file on the land, the affidavit contained this statement: "That I have made no other application under such Acts; that I do not apply to purchase the land above described on speculation, but in good faith to appropriate it to my own exclusive use

6559

(Testimony of Henry Dodge Morley.)

and benefit, and that I have not, directly or indirectly, made any agreement or contract, or in any way or manner, with any person or persons whomsoever, by which the title I may acquire from the Government of the United States may inure in whole or in part to the benefit of any person except myself." Did you know at the time you went up there to the Land Office that you would have to make an affidavit of that kind?

A. Well, not exactly like that. I knew that there was something that a man would have to go through, and I asked Heppe about it, and he says, "Well, he says, you can figure that the $100 you get is a personal benefit out of it." Well, I looked at it this way, that I would probably have no chance to use that timber claim, and $100 at that time was a benefit to me in that way; in that way I needed the money. At the time you made your final proof, there were these statements made: "Where did you get the money with which to pay for this land, and how long have you had same in your actual possession?

A. I made it in the tamale business and salmon fishing—about four years." [511] Do you remember being asked that question?

A. I do; yes.

Q. Why did you make that answer?

A. Well, it was up to me to make an answer of that description. Heppe told me about what I should say in regard to it. I could tell most anything. He asked me what occupation I was in and

(Testimony of Henry Dodge Morley.)

how I made that money; I had made some money that way; I did not make the money that I paid the Land Office with that way. I made money that way, but I had not saved it.

Q. When you went over there, do you remember being asked this question: "Did you pay out of your own individual funds all the expenses in connection with making this filing, and do you expect to pay for the land with your own money?

A. I did, I do."

A. I do.

Q. Why did you make those answers?

A. Well, to the best of my knowledge, that was the only way that I could win through with the deal.

Q. You were there to go through the deal as programmed?

A. Yes, I was supposed to fill the agreement."

When I went to Quincy to make my final proof Mr. Elam and Mr. Heppe were there ahead of me. You see I was late in making my proof. I took the ten days that were allowed and I was there on the last day of grace. Elam and Heppe told me that they were over there beforehand but I did not go there. I went as far as Oroville where I was told that Elam and Heppe would not be there and I had better wait, so I turned and went back and then when I [512] did go up there, either Elam or Heppe, one of them, telephoned to Chico to find out that I had gone.

"Q. Did Mr. Elam or Mr. Heppe at that time

(Testimony of Henry Dodge Morley.)

tell you about these questions that you would be asked in the County Clerk's office?

A. Why, yes, some of them. Heppe explained to me they would ask me, to my knowledge whether there was any mineral in the ground, as to whether it was ground better for the mineral or better adapted for the stone entry; he says, "You can answer that very easy, to the best of your knowledge, no, because you are not a miner, and have not dug into the ground to see."

Q. Did you ever hear of Tuman any time during this?

A. I did not. At the time that Heppe first came and talked to me about taking up this land, I understood that I was to take up the land, they were to furnish the money and after I got the deed I could transfer the land and receive my $100 and expenses.

Q. Now, at the time you were in Quincy, you stated in your testimony yesterday that Arthur Elam handed you $400 in paper money, and went with you over there; "he was one of my witnesses, and made the final proof." You had just been talking previously in your testimony about going into the printing office and paying the printer the money and then coming out and giving Mr. Elam the change that was left, and then you said: "Then we went to the hotel and it came time to make this proof, and he took me up to his room and handed me $400 in paper money, and [513] he went with me over there." Whereabouts did you go?

A. Over to the Land Office, I presume; that is

(Testimony of Henry Dodge Morley.)

where we made the final proof.

After I made my final proof before the County Clerk we went over to the County Clerk's office instead of the Land Office. I used the $400 that Mr. Elam handed me in the Plumas House to pay for the land.

Cross-examination.

I had not been personally acquainted with Heppe more than a day or so at the time that I met him in Susanville. The conversation I had with him in Susanville was not right in the bar-room part of the saloon but it was in the rear of the building and occurred the day before I made my application.

Q. Will you please repeat in detail, as near as you can, what transpired at this first conversation—I mean what was said in this first conversation?

A. Well, Mr. Heppe met me and he asked me if I had ever used my land right, that is, my timber right, and I told him I had not, and he wanted to know if I wanted to make $100 pretty easy. Well, I told him I needed it, yes, and I wanted to know how I could do it, and he told me by taking up a timber claim and going ahead and proving up on it. I asked him how I could prove up on it, and he told me that he would see I would get the money to do that, and I told him I had not been on the land, and he says, that don't make any difference, you can go on it afterwards. [514] Well, we went on up there, and he gave me the numbers and I filed on it. That is about all I remember of any more than I asked if there was not a little bit of danger of a

(Testimony of Henry Dodge Morley.)

man getting himself in trouble and he told me he didn't think so. He said his wife had taken up a claim.

"Q. That was before you filed, all this transpired? A. That was before I filed."

After I filed I did not have any other conversation with Heppe until the day he took me over and showed me the land and told me to be sure to show up in Quincy on the right day.

"Q. You said you borrowed $400 with which to pay for this land, that is you received $400?

A. Yes.

Q. Hadn't you discussed that matter with Heppe or anyone else before you got it?

A. Any more than I told you that I asked him how I would get this money to make the final proof, and he says, "I will see that you get it."

Q. Had you had any conversation prior to the making of your final proof touching the disposition of the land, to whom you would sell it?

A. Not a bit.

Q. Had you had any conversation with Mr. Heppe to the effect that you would sell it to him?

A. Well, not exactly in that way, no, any more than I presumed that my bargain would be binding to him [515] if he furnished the money for it.

Q. That was a mere presumption on your part?

A. Why, certainly, I didn't see any other way.

Q. There was nothing said. Did you say, "I will take up this land and sell it to you, Mr. Heppe,

(Testimony of Henry Dodge Morley.)

or anyone that you may produce."

A. Why, there was no word of sale mentioned any more than that.

Q. Did you get the impression that you should turn this land over to Mr. Heppe or someone that he would represent from the mere fact that he was loaning you the money?

A. I certainly did. I considered it an agreement on my part."

There was nothing outside of that circumstance that gave me the impression that I was to sell the land to anyone he might name as he did not say that he represented anybody any more than that he would see that I got the money to pay for the land. At that time I did not know Mr. Tuman or Mr. Elam and I do not know that I had ever heard of the Curtis, Collins & Holbrook Co. or of Mr. Remick.

Redirect Examination.

Mr. PIER.—Q. When did you first get the impression that you were to turn the land over to someone?

A. Why, through Mr. Heppe's statement that I would receive $100 for it.

Q. That was the first time that Heppe came to see you? A. Yes. [516]

Testimony of Mark Jackson Self, for Complainant.

MARK JACKSON SELF, called as a witness for complainant, testified as follows:

My name is Mark Jackson Self. I am 79 years

(Testimony of Mark Jackson Self.)

of age, and reside at Prattville, California. I made a timber land entry in 1902. I did not look at the land before I filed on it but I went with Heppe about a week afterwards; just kind of cross-cut it. I had a talk with Heppe before I went out to look at the land before taking it up.

"Q. Yes; what did he say to you?

A. He came to me; I was on the election, and he came to me and took me out to one side and said he had one piece of land left if I wanted it. I said I needed some money very bad just then and I would take up the land, I guessed. He said if I didn't want it Al Costar would take it; I told him I guessed I would take it; I says, 'I am in need of some money now pretty bad,' I says, 'I will need it pretty soon, before the time is out.' Then we went and looked at a piece of land there; that was all there was to it."

"Q. Did he say anything about how much money there was in it when he came and talked to you?

A. He said there was $100 in it and I said it was not enough; I told him it ought to be $150, and I said 'and expenses paid.' He said probably they would stand for it but he says, 'I don't know, I won't promise you that.' [517]

"Q. He said he would only promise you the $100?

"A. He said the company probably would stand it, Holbrook and Tuman—Walbrook or Holbrook, was it not? McGregor and Holbrook, I guess it was.

Q. I presume you mean Gregory?

(Testimony of Mark Jackson Self.)

A. Yes, that is the name.

Q. Now, did he say anything about paying your expenses at that time, too?

A. No, he paid them though.

Q. He paid all the expenses?

A. Yes; I furnished the team and he paid the expenses over and back.

Q. What were you to do to get the $100?

A. I was to deed the land over."

When I deeded the land over I was to get it. I don't remember how long it was after this conversation before we went out to look at the land. My recollection is kind of poor, anyway.

.Q Did you go and look at the land before you went and filed on it?

A. Yes, but then we rode through it, that is all. It was only a day or two before I filed that we went to look at the land. I went to Susanville to file on the land and Heppe paid all the expenses on that trip and then I made final proof in Quincy. I was summoned over there on a jury and went over and paid my own expenses over and back, but when I settled up, George Tuman paid me back.

Q. George Tuman paid you back?

A. Yes. I went over there to prove up on the land, but I had to wait until the trial was over." [518]

The clerks were all busy and I had to wait. Another thing, I had to wait for Tuman to send the money.

(Testimony of Mark Jackson Self.)

"Q. Did Tuman send you money to prove up on the land with?

"A. Yes; Art Elam brought it to me, brought $400.

He handed it to me right in the hotel at Quincy. I took the $400 and deposited it with Horace McBeth until the trial came off and then I paid it over to him. One-quarter of the land belonged to the Sierra Lumber Company and there was $100 of the money that was left for me.

"Q. Was returned to you?

A. No; it was not returned to me. I never got it; I never went after it.

Q. You were given notice there was $100 left there? A. Yes.

Q. After you proved up on the land what did you do with the land?

Well, I deeded it over, you know, to Tuman."

I don't know who the deed was drawn to. I think it was drawn in favor of Gregory. Rob Costar made out the deed and handed it to Tuman.

Q. Were you present when he handed it to Tuman?

A. Yes. After he got the deed he paid me over the money.

Q. How much did he hand you?

A. He handed me, I think it was, $130 and some odd dollars, altogether, for my expenses and everything. He handed me that. [519]

"Q. Did you ever pay Jack Heppe for showing you the land? A. No.

(Testimony of Mark Jackson Self.)

"Q. Was there ever anything said about paying Jack Heppe for showing you the land?

"A. No, not a thing.

"Q. Did you ever pay the publication fee?

"A. Heppe did.

"Q. Heppe paid that?

"A. Heppe paid that. Him or Tuman; I don't know which."

I never paid it. I had nothing to do with that. I just gave Heppe the paper and he took it over to the office and had it published.

"Q. Did you tell Heppe at the time you started out that you would deed the land over?

"A. No, I did not tell him anything about deeding the land, at all; there was nothing said about deeding the land over, only what I say, he said there was $100 in it, and of course I knew what it was.

"Q. You knew what it was?

"A. Yes; I did not tell him anything; I asked no questions."

I did not expect to keep the land when I started out. I expected to deed it over. If I had had the money I would have taken the land up for my own use.

"Q. At the time you had no money to put into it for your own use? [520]

"A. No; at that time I had no money.

"Q. Did you consider you were borrowing the $400 to pay for the land?

"A. I don't know what I considered about that; I cannot remember. I knew that the money would

(Testimony of Mark Jackson Self.)

go to pay for the land, but I didn't know who it was from or anything about it. If I had it to do over again I would hold the land, I would have held the land, because I could have sold the land for a good deal more."

"Q. Afterwards?

"A. Yes, to the Walker Company. And then I could have used the timber on the land; I could have made shakes there.

"Q. You had no idea of keeping the land when you started out, though?

"A. Not at all."

I cannot say of my own knowledge that Heppe or Tuman paid the newspaper for publishing that notice. I know somebody did. I don't know who paid it; whether it was Heppe or Tuman. It was one of them, I think.

"Q. But you don't know of your own knowledge that it was either of them, do you?

"A. No, I don't of my own knowledge.

"Q. Did you consider that you were under contract, at the time you made your filing at Susanville, to sell the land?

"A. No, I considered that I would sell it but I don't think there was any contract about it.

"Q. You didn't consider yourself obligated to sell it? [521] A. No."

If I had got the money afterwards so that I could, I would have held it, and I considered that I was perfectly free to hold it, myself. The first time that I had any real agreement to sell the land was when

(Testimony of Mark Jackson Self.)

Tuman spoke to me about the deed, at Prattville. He came by here and wanted me to go up to town, so I went. He wanted my wife to sign the deed but I told him I would not draw her into it. All the understanding that I had before I made by filing was that I knew there would be people buying land and I could sell it if I wanted to. But I made no agreement at the time to sell the land. I got the notice from the Susanville Land Office that there was $100 coming to me, but I did not go after it nor authorize anyone else to get it. They told me I could draw the money if I wanted to, but I thought I would be taking a risk so I left it. I don't know who got it. I considered that if I told anyone I would sell the land to him, that that would be a contract. I don't know whether or not it would have to be in writing.

"Q. You don't know whether you would or not?

"A. I don't know about that. It might have been a verbal contract.

"Q. What did you think Heppe was showing you the land for?

"A. Well, he was showing it for those parties, I guess, and trying to make some money out of it himself, too. [522]

"Q. Where could they make any money out of it if you did not turn over the land?

"A. They could not have if I had not turned it over."

When I deeded the land in Prattville, I went over at the suggestion of Tuman, who came by and told me to come up.

(Testimony of Mark Jackson Self.)

"Q. What did he say to you at that time?

"A. He asked me if I would deed the land over. I told him to wait a while; that they had made a mistake in my name, they put it Self M. Jackson, and I had to re-advertise, and I wanted him to wait a while, and he said that would not make any difference, re-advertise afterwards."

He went on and I followed him up to Prattville and he took the deed then. He did not wait for them to readvertise.

"Q. Did you have any discussion about how much you should receive for the land at that time?

"A. No, nothing said.

Q. Nothing said at all?

"A. Only that he was to pay my expenses and the $100—my expenses while I was in Quincy amounted to about $30. He paid that.

"Q. There was no dickering about the price then, at all, at that time?

"A. Nothing at all.

"Q. When you went to Prattville how much did you expect to get? [523]

"A. Well, I expected to get the $100 anyhow, and expenses.

"Q. Just as you understood when you started out?

"A. Yes.

Mr. PIER.—What did you expect when you started out?

"A. I expected to deed the land over.

"Q. And what were you to get for deeding the land over? "A. The money.

(Testimony of Mark Jackson Self.)

"Q. How much?

"A. One hundred and thirty dollars, I told you—that is $100 for the land and $30 for my expenses.

"Q. Was that what you expected when you started out to look at the land?

"A. No, I didn't think anything about it then. I don't know as I had any expectations at all at that time.

"Q. When Heppe came and talked to you and you went and looked at the land, what did you expect to get at that time?

"A. I didn't know whether they would give me any more than $100 or not; I didn't know what to think about it. But I needed some money, I was owing some money and it would come due in a short time and I had to have money to pay it. I went after the land and got it and deeded it over. [524]

"Q. Did you go out to get the land just to get the land? A. Yes.

"Q. Or was it to get the money?

"A. I went out to get the land and to get the money too; I wanted the money, as I told you, I needed the money.

"Q. And the amount of money you expected to get when you started out was the $100 for doing it all?

"A. One hundred dollars and expenses."

Recross-examination.

I don't really know of my own knowledge, what Heppe's reason was for showing me the land.

"Q. That was just a supposition on your part?

"A. That was all."

(Testimony of Mark Jackson Self.)

"Q. In your application, Mr. Self, you say 'that I do not apply to purchase the land above described on speculation but in good faith to appropriate it to my own exclusive use and benefit, and that I have not directly or indirectly made any agreement or contract or in any way or manner with any person or persons, whomsoever, by which the title I may acquire from the Government of the United States may inure in whole or in part to the benefit of any person except myself.' Now, when you made this application how did you consider it?

"A. I considered that the sale of that land was a benefit to me.

"Q. Was a benefit to you? [525]

"A. Yes.

"Q. That was the view you took of it?

"A. That was the view I took of it, yes.

"Q. This part of it, 'that I have not directly or indirectly made any agreement or contract or in any way or manner with any person or persons whomsoever'—did you have any reason to believe at that time or to know that that was not true, that statement?

"A. I don't know.

"Q. Here is the statement; can you read it?

"A. I can't read it.

"Q. I will read it to you: 'That I have not directly or indirectly made any agreement or contract or in any way or manner with any person or persons, whomsoever, by which the title I may acquire from the Government of the United States may inure in

(Testimony of Mark Jackson Self.)

whole or in part to the benefit of any person except myself.' Now, I want to know if you considered at that time that you were misstating the fact regarding any agreement or contract?

"A. I considered that it would be a benefit to me to take that land up and sell it, because as I tell you, I needed money.

"Q. I understand that.

"A. But I don't see why that should be construed in that way.

"Q. Here is what I am trying to get at, whether you considered this statement correct at that time—'that I have not directly or indirectly made any agreement or contract or in any way or manner with any person or persons.' [526]

"A. I had not.

"Q. You had not?

"A. I had not made any agreement.

"Q. You had not made any agreement or contract with anyone? A. No.

Mr. PIER.—"Q. You had told Heppe that you would take up the land, had you not? A. Yes.

"Q. And that was in response to Heppe's proposition that there was $100 and expenses in it for you to take up the land? A. Yes.

Mr. PETER.—"Q. He did not tell you how much you would get? He did not tell you you were to get $100?

"A. No, he did not tell me how I was to get it or anything like that.

(Testimony of Mark Jackson Self.)

Mr. PIER.—"Q. How were you to get the $100 and expenses?

"A. Well, I didn't know anything about that.

"Q. You didn't know how the details of the thing were to be carried out?

"A. How I would get the money—I didn't know where the money was coming from, only I guessed it was coming from Tuman, through Tuman. He wrote me, George Tuman wrote me a letter just before I went to prove up, to go over there and make an excuse of some kind, that he could not get the necessaries just now to send me; that [527] is the way it was written in the paper. I had this letter for a long time and I lost it. I was called on a jury so it was not necessary for me to make any excuse.

"Q. Now, did you have any talk with George Tuman between the time you filed on the land and the time he came and told you to come up to Prattville?

"A. Never had a word to say to him, at all, not a word."

Recross-examination.

I never knew D. G. Curtis, J. G. Curtis, T. D. Collins, E. S. Collins, C. H. Holbrook, Sr., C. H. Holbrook, Jr., or Irving F. Moulton. [528]

Testimony of Charles J. Monroe, for Complainant.

CHARLES J. MONROE, called as a witness for complainant, testified as follows:

My name is Charles J. Monroe. I am 66 years of age; residence, Quincy, Plumas County, California.

(Testimony of Charles J. Monroe.)

I have followed the occupation of butcher most of the time for 47 years. I remember making a timber and stone entry when I was living at Prattville. The land was located almost on the summit near the road toward Sterling. I was shown the land the first time by Jack Heppe. George Gardenhire and his son, Jack Gardenhire, and Leroy Benner were also in the party. Benner was running a kind of a meat stand in Prattville for the Storers. George Gardenhire was gambling and Jake Gardenhire was working on Frank Sorsoli's residence. They were all living at Prattville at that time. After we looked at the land we returned to Prattville and went to Susanville the next day, but I can't recall when I filed on the land.

Q. Well, the day you filed on the land was the 12th of July, 1902; now, did you file on the land before you looked at it or afterwards?

A. No, after I looked at it. When I went to Susanville George Gardenhire and his son, Jake Gardenhire, and Leroy Benner were in the party and also Jack Heppe. After filing on the land at Susanville we came back to Prattville and stayed there until time to make final proof, which I think was about three months. Between the time of making my filing and final proof I went out to look at the land the second time with Arthur Elam as he said I had to do it and Heppe also said I had to [529] go and look at the land.

Q. What did you do when you looked at the land the second time?

(Testimony of Charles J. Monroe.)

A. I went to two corners of the quarter, just close to the road, and it was pretty warm, and we came back to the wagon and went up to the Gardenhires' piece or section, and also to Benner's section, and then went on to Susanville together; that is the next day we went to Susanville.

Q. Proved up on the land? A. Yes.

Q. Who went with you to Susanville at the time you proved up on the land?

A. Jack Heppe, George Gardenhire and his son Jake, and Leroy Benner.

Q. Was Arthur Elam there at Susanville at that time? A. No.

Q. How did you happen to take up his land, Mr. Monroe?

A. Well, Jack Heppe came to me one day and wanted to know if I didn't want to make $100 easier than working for it, and I says yes; he told me how I could make it.

Q. What did he tell you as to how you could make it?

A. He said he would go and locate me on some land, and I could file on it. I said I didn't want to pay out any money to file on land, and he said the money would be handed to me. I took his advice and went out and filed on this land. [530]

Q. Did he say anything about what you were to do with the land when you filed on it?

A. He said there would be a purchaser there, that I could dispose of it as soon as I proved up on it.

Q. And that you would get how much?

(Testimony of Charles J. Monroe.)

A. One hundred dollars.

Q. As soon as you proved up on the land?

A. Yes.

Q. What did you tell him when he made that proposition to you?

A. Well, he says, I may be telling something that was not right; he says, "If you want to make $100 that is the way you can make it."

Q. So you started out with that idea in view, did you?

A. Yes. I never had any talk with Benner about his taking up land until we went out to look at it the first time before filing. I think we did talk in the wagon in regard to it on our way over to Susanville but I have forgotten the words now.

Mr. PIER.—Q. Mr. Monroe, did you people talk over on your first trip to Susanville, the manner in which or what you were taking up the land for?

A. Undoubtedly we did.

Q. Now, who was present on this trip when you were talking it over?

A. Just us four in that wagon—us five, I mean.

Q. You five? [531]

A. Yes, the two Gardenhires, Heppe, myself and Leroy Benner.

I cannot recollect what was said. My memory does not serve me well enough.

Q. Do you know whether Benner told you that he was going to take up this land and expected to sell it?

A. I think that was the conversation, something

(Testimony of Charles J. Monroe.)

like that, yes. I ain't positive, but I think that is what it was.

Q. Do you know whether or not Benner had any idea as to what he was going to make out of it by taking up this land?

Mr. SHURTLEFF.—I object to that upon the ground it calls for the conclusion of the witness. Let him state what Benner said to him about it.

Mr. PIER.—He says that he cannot state.

The MASTER.—The objection is good.

Mr. PIER.—I will note an exception.

Mr. PIER.—Q. Did Mr. Benner tell you what he expected to get by taking up this land? A. Yes.

Q. What did he tell you that he expected to get?

A. He said he would get $100 the same as I was getting. Neither of the Gardenhires discussed with me what they were taking up the land for.

Q. When you went to Susanville to file on the land did you pay any of your expenses on that trip?

A. No.

Q. Do you know who paid them? [532]

A. Yes.

Q. Who paid them?

A. Jack Heppe. He advanced me the money; I don't know where it came from.

The MASTER.—Q. Did you say he advanced the money or he advanced me the money.

A. He advanced me the money.

Q. He handed it over to you?

A. Yes, that is what I meant by that.

Mr. PIER.—Q. Did you pay any money at the

(Testimony of Charles J. Monroe.)

Land Office the first time you went there?

A. Yes.

Q. Do you know how much you paid the first time you went? A. No, I do not.

Q. Where did you get whatever money you paid the first time you went to the Land Office, where did you get that?

A. From Heppe. On the second trip to look at the land I did not pay any of the expenses of the trip.

Q. Who paid them?

A. Heppe handed me the money.

Q. When you paid for the land, did you pay for that with your own money? A. No.

Q. Where did you get the money to pay for that?

A. Tuman handed it to me.

Q. Where did he hand it to you?

A. In the Emerson Hotel.

Q. Didn't Mr. Tuman say anything to you at that [533] time?

A. I says, "That is a whole lot of money," and he says, "I think you will need that much."

The MASTER.—Q. How much money was it?

A. Four hundred dollars.

Q. After you filed on the land, after you proved up on the land at Susanville on this second trip, what did you do with the land?

A. Well, the next day Tuman brough me back in his own rig to Prattville, a two-horse rig, to Bob Coster's a notary public, and he made out the papers, and we went over to the Prattvile Hotel and I transferred the papers to him, and he paid me $100.

(Testimony of Charles J. Monroe.)

The MASTER.—Q. You came back from Susanville in whose buggy?

A. In Tuman's, the man who gave me the money to pay for the land. The deed was made out before Robert Costar, a notary public. I do not know where the Gardenhires and Leroy Benner got their money to pay for the land nor do I know who paid their expenses. Heppe never said anything to me about charging me a fee and I never paid him anything for locating me on the land. On my way back to Susanville with Mr. Tuman we did not have any talk about timber land that I can call to mind.

Q. Did Tuman pay any of your expenses?

A. No, that is, only he handed me that money to pay for the land.

We came right through without stopping from Susanville [534] to Prattville and did not stop for dinner on the way. On the two different occasions that we went out to look at the land the expenses were paid by Heppe, the first trip and by Arthur Elam the second. I do not know if Heppe paid for the dinner for all four of us. He told me privately that it was settled. I could not say whether or not on the second trip to Humnug with Arthur Elam he paid for the dinner of the other members of the party. I asked Mr. Miller, the man that owned the hotel, if any dinner was settled for and he said it was. On the first trip to Susanville we stopped at Brown's for dinner and Mr. Heppe said he has settled for the dinner.

(Testimony of Charles J. Monroe.)

Q. Did he tell you that before the others or did he tell you alone?

A. He told me on the porch there; I think we were all together.

When we were in Susanville we stopped at the Emerson Hotel and Heppe handed me the money to settle my bill. On our way back from Susanville we did not have dinner either trip but in going the party ate at Brown's both times. Heppe paid for the dinner at Brown's on the second trip over.

Q. Did Heppe tell you that he had paid for it?

A. He said he had settled for the lunch, dinner.

Q. When did he tell you that?

A. On the porch there at Brown's.

Q. He told you both times on the porch, did he?

A. Yes.

Q. Were all of you present at that time?

A. I can't say that; I don't remember that. [535] On the first trip over all of the party were there on the porch when Heppe said he had settled for the dinner; I can't recall whether or not we were all on the porch the second time. We did not all go to the Land Office together at the time I made final proof. George Gardenhire, Jake Gardenhire and Leroy Benner went with me to the Land Office and I am pretty sure that we all made final proof at the same time. The $400 that was handed to me with which to pay for the land was in twenty dollar gold pieces. It was handed to me I think in the waiting-room of the Emerson Hotel.

(Testimony of Charles J. Monroe.)

Q. Did you see Tuman hand anybody else any money that day at all?

A. No. I did not see either Leroy Benner, Jake Gardenhire, or George Gardenhire pay money to the Land Office at the time they made proof.

Q. When you started out did you know how much the land was going to cost you, how much the land would cost, how much you would have to pay to the Government? A. No.

Cross-examination.

Mr. SHURTLEFF.—Q. How long did you say that you had resided at Prattville, Mr. Monroe?

A. I don't think I made that statement. I think I had been in Prattville something over a month before I filed on the land. Previous to that I had lived in Oroville. I do not know how long I had known [536] Jack Heppe but it was several years before I met him there. I knew him pretty well.

Q. Now, when was it that he came to you and you had this conversation with him touching the taking up of this land?

A. It was there on Frank Sorsoli's saloon porch, a day or two before we went out to look at the land.

Q. Who introduced the subject of taking up timber land at that time, you or Mr. Heppe?

A. He came to me and wanted to know if I did not want to make $100 without working for it.

Q. Without working for it. What did you say?

A. I told him yes. That was about all the conversation at that time in so far as my memory serves me now. I cannot recall when the conversation took

(Testimony of Charles J. Monroe.)

place in which I said I did not want to put up any money to take lands and he said that the money would be provided but I am pretty sure that it occurred before we went out to look at the land.

Q. What did you say in response to that suggestion of Mr. Heppe?

A. I asked him where the money was coming from, and he said the money would be handed to me.

Q. The money for what?

A. For filing on the land, and for proving up on the land.

Q. Did you ask him that question, where the money would be coming from to file on the land?

A. Yes.

Q. Do you remember that?

A. I think so. [537]

Q. Do you remember it distinctly, Mr. Monroe? Not what you think; I want to know what you remember? A. Yes, I do.

Q. That Jack Heppe stated to you that the money would be forthcoming to file on the land? A. Yes.

Q. Do you remember that as a distinct fact?

A. Yes.

Q. And that that occurred before you went to look at the land?

A. Yes. I did not know how much money would be required to file on the land. I think I asked Heppe but I have forgotten now what he told me.

Q. Are you sure? I do not want what you think, Mr. Monroe, I want what you can remember?

A. Well, then, I don't remember.

(Testimony of Charles J. Monroe.)

Q. Did you say, or words equivalent to saying, that is all right, Mr. Heppe, I will take it up and sell it to you"?

A. I don't think I said anything of the sort to him.

Q. Did you say that you would sell it to anyone?

A. He said there would be a purchaser there when I proved upon it.

Q. That is what he said? What did you do?

A. I told him all right.

Q. You remember now that you told him you would sell the land to any purchaser that he might produce?

A. I did not say them words. [538]

Q. What did you say?

A. He said there would be a purchaser there the day you prove up.

He did not designate who the purchaser would be or anything about him.

Q. What did you say?

A. I told him it would be all right.

Q. You remember that conversation? A. Yes.

Q. When did that occur?

A. That was after we had filed on the land.

Q. That was after you had filed on the land, was it?

A. That he told me there would be a purchaser there.

Q. Now, you remember that that conversation took place after you filed on the land, do you?

A. I don't remember it sure, but I think so. It took place in Susanville. We had two discussions

(Testimony of Charles J. Monroe.)

with regard to that, one at Prattville and one at Susanville, one before and one after I filed.

Q. I want the conversation that took place before you filed?

A. I can't remember that exactly. I told him in the conversation before I filed that I did not have the money to file on the land or to pay for the land when I proved up and he says, "That money will be forthcoming; there will be a purchaser there when you prove up on your land. [539]

Q. You remember that occurred before you went to look at the land? A. Yes.

Q. So that occurred at Prattville?

A. Well, twice I had the conversation with him.

Q. I am trying to confine your mind to what occurred before you went to look at the land?

A. Yes, that occurred before I went to look at the land.

Q. Where?

A. At Prattville, at Frank Sorcoli's porch. In response to the suggestion from Heppe that "there will be a purchaser" I did not say I would sell the land to him.

Q. What did you say?

A. I said that would be all right." I remember that when I made the application for the land I made an affidavit at Susanville but I do not remember that I wrote it. I don't think I did.

Q. Does that took like a correct photograph of your signature or would you think that the original of that would be your signature?

(Testimony of Charles J. Monroe.)

A. Yes, Charles J. Monroe.

Q. You think that you signed, that the original of that would be your signature? A. Yes.

Q. I read this from this affidavit made by you on July 12, 1902, at Susanville: "That I have made no other application under said act"—that is the timber act—"that I do not apply to purchase the land above described [540] on speculation, but in good faith to appropriate it to my own exclusive use and benefit, and that I have not, directly or indirectly, made any agreement or contract, or in any way or manner, with any person or persons, whomsoever, by which the title I may acquire from the Government of the United States may inure in whole or in part to the benefit of any person except myself." When you made that affidavit was that true or untrue?

A. I guess I done it falsely.

Q. When you took that affidavit you say you made a false statement in it? A. Yes.

Q. That you had agreed to sell it to somebody else?

A. I did not agree to. When he said there would be a purchaser I said all right.

Q. You did not in your mind regard that as an agreement? A. No.

Q. Did you feel as a result of that conversation that you had with Heppe in front of the saloon in Prattville, that there was a moral obligation upon your part to sell that land to whomsoever Mr. Heppe might bring to you?

A. I didn't give that a thought.

Q. What did you think about it? Didn't you give

(Testimony of Charles J. Monroe.)

it a thought when you made this affidavit?

A. I thought I was going to make $100. [541]

Q. Let me understand you, Mr. Monroe; you were not willing, for $100, to make a false affidavit, were you? A. It seems as though I did.

Q. So that at the time when you swore that you had not made a contract you had made a contract under and by the terms of which you had agreed to sell this property to somebody else? A. Yes.

Q. Where did you say that you got the money from to pay for this land?

A. Tuman handed it to me. I had had a discussion touching the furnishing of the money with Mr. Heppe prior to that time and he said the money would be forthcoming. I remember making my final proof in Susanville and I was sworn at that time.

Q. You were asked these questions? A. Yes.

Q. Do you remember having been asked this question and giving this answer: "Have you sold or transferred your claim to this land since making your sworn statement, or have you directly or indirectly made any agreement or contract, in any way or manner, with any person whomsoever, by which the title which you may acquire from the Government of the United States may inure, in whole or in part, to the benefit of any person except yourself?"

A. No, sir, I have not." That was also not the fact? A. Yes.

Q. Do you remember having been asked this

(Testimony of Charles J. Monroe.)

question: "Has any person offered to purchase this land [542] after you acquire title? If so, who, and for what amount? A. No, sir."

A. Yes, sir.

Q. What have you got to say about that answer?

A. I don't think I was asked that,

Q. You were not asked that question?

A. I don't think so; I don't recollect it.

Q. Do you remember having been asked this question: "Where did you get the money with which to pay for this land, and how long have you had same in your actual possession? A. Saved it up from my own earnings. Oh, well, I have had part of it for the last seven years and I have had part of it later."

A. Yes, I made that statement.

Q. Was that correct?

A. No. Heppe told me to tell that.

Q. Had you known Jack Heppe for 5 or 6 years and taken your morals from Jack Heppe?

A. It seems so. When I started out with Jack Heppe upon these different trips in which he paid the expenses he had not agreed in advance to pay them. My purpose in going to the land the second time with Elam was that I thought I had to go on the land when I took it up, had to see the corners. I had seen it before that, but had not been on the land. I made my initial application without having been upon the land, but I had seen the land, that is a part of it. It comes right close to the road. The land is something like 13 miles from

(Testimony of Charles J. Monroe.)

Prattville. Two or three days after I met Jack Heppe at Prattville the Gardenhires, Leroy [543] Benner and myself with Jack Heppe went from Prattville to look at the land and we rode along the road and looked at the land from the wagon.

Q. Who did you finally have your dealings with, which resulted in their paying you $100 for the land and you making a deed to it?

A. Who did I have my dealings with?

Q. You deeded the land, did you not, to somebody? A. Yes.

Q. Do you remember to whom?

A. To Tuman.

Q. When did you first have any conversation with Mr. Tuman touching the purchase of the land by him?

A. The day he handed me the money. That is the first time I ever spoke to the man.

Q. What transpired then?

A. He came in and he had that money in his hand. He says, "You will need this before you go up to the Land Office,"

That was in the Emerson Hotel at Susanville and I did not discuss the matter with him after that. Even on the way from Susanville to Prattville we did not discuss the matter any to speak of, when I rode back in Tuman's conveyance. About the only discussion on the trip back to Prattville was, as I remember, that Tuman said, "Well, as soon as we get to Prattville go over to Costar and

(Testimony of Charles J. Monroe.)

draw up the papers and I will pay you for the land."

Q. What did you say? A. I said all right.

Q. Who told you that Tuman was the person that would purchase the land from you? [544]

A. There was nobody told me that.

Q. Did Jack Heppe tell you that?

A. No, he said there would be a purchaser there; he never mentioned any names.

Q. Didn't you go to Jack Heppe and say, "Heppe, is this the man that is to purchase this land?"

A. If I did, I don't remember it.

Q. You just sold that land, so far as you know, to the first person that came along who was willing to purchase it?

A. Yes; I got my $100, which I had agreed to take for it, and that was all it was good for.

Q. When did you agree to take that $100?

A. When did I agree to take it?

Q. Yes.

A. When he said, if you want to make $100.

Q. What did you say?

A. I told him, yes. He says, "Without working for it," and I says "Yes."

Q. This was where?

A. Before I filed on it, on the porch there at Frank Sorsoli's saloon.

Q. Did you know then who Heppe was representing? A. No, I did not ask him.

Q. Why was it when you made these statements to the Land Office, Mr. Monroe, that you did not

(Testimony of Charles J. Monroe.)

tell the facts as you have told them now?

A. I done wrong. [545]

Q. You must have some reason?

A. Yes, there was so much of that kind of work done, I did not think there was anything that would hold me back from saying anything like that.

Q. Didn't you appreciate the solemnity of an oath that you had been sworn to tell the truth?

A. Yes, I do.

Q. Why didn't you do it?

A. That is a hard question; I cannot answer that, why I did not do it. How many of us do it that way?

Q. Didn't you know at the time you started out to take up this land in pursuing that method that you did pursue, that you were doing wrong?

A. Yes, I did. On the second trip to look at this land Arthur Elam, George Gardenhire, Jake Gardenhire, Leroy Benner, were with me, and Arthur Elam drove the rig. The first time it was Jack Heppe and the second time Arthur Elam. I told him I wanted to go on that land before I proved up on it. There was no one present at the conversation that I had with Heppe in front of Sorsoli's saloon. There were some Indians around there and quite a few tourists, but there was no third person present who overheard our conversation as we were to one side from the store.

Mr. PIER.—Q. How much were you making a day at that time, Mr. Monroe?

A. I was getting $3.00 a day working on Sor-

(Testimony of W. J. Gardenhire.)

soli's residence. [546] At the time that I had the transaction with Mr. Tuman I did not recollect of having made any statements to him touching the method in which I had taken up the land. [547]

Testimony of W. J. Gardenhire, for Complainant.

W. J. GARDENHIRE, called as a witness for complainant, testified as follows:

My name is W. J. Gardenhire; age, 40 years; occupation, common laborer; residence, Woodland, California. George D. Gardenhire is my father. In 1902, when I was living in Prattville, California, I made a timber land entry at Susanville Land Office. There were four of us in the party that went out to look at the land, Leroy Benner, Jack Monroe, my father, and myself, and a fellow by the name of Elam drove the team. After I had looked at the land we went up to the Susanville Land Office. Arthur Elam drove the team and Jack Heppe was also with us. We went to the Land Office to file on the land; my father and I went together. I made two trips to the Land Office, but at the time that I filed was on the first trip. I do not believe that I paid the Land Office any filing fees. After filing on the land, I returned to Prattville and stayed around there until I returned to Susanville to make final proof. At the time I made final proof I paid the Land Office $400. My father was there at the time, but I do not know whether or not he paid the Land Office anything at that time. After I made my final proof I believe I went to the next

(Testimony of W. J. Gardenhire.)

room in the same building where I signed a deed transferring the land, and got $100. I do not know if my father got any money in there at that time.

Q. How did you happen to take up this land, Mr. [548] Gardenhire?

A. Well, it was through this man, Heppe.

Q. Did Heppe come to you and suggest taking up this land? A. Yes.

Q. What did he say to you at the time he came to you and suggested taking up the land?

A. A chance to make a piece of money.

Q. Did he say how much?

A. One hundred dollars, and expenses.

Q. What did he say you were to do?

A. Go out and look at this land, go over there and filed on it, I believe; that is as much as I remember.

Q. Did he say what you were to do with the land

Q. Did he say anything about what you were to do with the land after you filed on it?

A. Turn it over. My father took up a piece of timber land at the same time that I did, but I do not know whether or not he made the same proposition to him. My father and I did talk the matter over, but I do not think he told me anything about the way he took np the timber land. I believe that my father and I discussed it once or twice before we filed on the land, but I am not sure.

Q. Did your father ever tell you what he expected to get for taking up his timber claim?

A. I suppose we would get the same, I guess.

(Testimony of W. J. Gardenhire.)

Mr. SHURTLEFF.—Q. Did your father tell you that?

A. Yes. When Heppe first made the suggestion about taking [549] up the timber land he talked with father and me separately, but I do not know which one of us he talked with first. I do not believe I would have taken up a timber claim at that time if Mr. Heppe had not made the proposition to me, as I did not have funds to pay for the land. I do not think my father had sufficient funds either, but I would not say for sure. When I was at Susanville the second time to make my final proof, I paid the Land Office for the land $400, which, I think, I got from my father, but where he got the money, I could not say.

Q. Did you give any note for it? A. No.

Q. Did you father tell you where he got it?

A. I couldn't say. I believe he did, though I ain't sure.

Q. Have you any idea where he got that money?

Objected to by Mr. Shurtleff.

Objection sustained.

Objection withdrawn upon witness being instructed to answer the question yes or no.

Mr. PIER.—Q. Answer it yes or no.

A. I will have to say no, I guess.

Q. When Heppe came to you the first time and suggested the taking up of the timber land, he told you that there would be $100 and expenses; is that correct? A. Yes.

(Testimony of W. J. Gardenhire.)

Q. What did you tell him when he made that proposition? [550]

A. I told him all right, I would do it.

Q. Did your father ever tell you whether Heppe had ever made him a proposition to take up timber land or not? A. Yes, I believe he did.

Q. Did he tell you what Heppe's proposition was to him?

A. Just the same as mine, I believe.

Mr. SHURTLEFF.—I move that that answer be stricken out as not responsive to the question.

The MASTER.—That will be stricken out.

Mr. PIER.—I note an exception.

Mr. PIER.—Q. Did your father ever tell you as to whether or not Heppe had made any kind of proposition about taking up timber land?

A. Yes, he suggested taking it up the same as I was.

Q. Did he state as to whether or not Heppe had said to him that he would make $100 if he took up the timber claim? A. Yes.

Q. Did he state whether or not Heppe told him that his expenses would be paid on the trip if he would take up the timber land? A. Yes.

Q. Did he tell you whether or not he intended to take up Heppe's proposition? A. Yes.

Q. What did he say? A. He said he would.

Q. Did you father go into that room at Susanville [551] at the same time you did when you received the $100?

A. I think he did. I could not say whether or

(Testimony of W. J. Gardenhire.)

not he was handed any money at that time and he never told me that he had received $100 on account of his timber claim. I did not discuss this matter with either Leroy Benner or Charles Monroe. I don't know where my father is at the present time. About three weeks ago he was in Sterling still, and he is in pretty poor health. At the time Heppe made the suggestion about taking up timber land there was nothing said about a location fee. I did not expect to pay him anything for taking me out and locating me on the land and I never did pay him anything.

Cross-examination.

On the second trip there was my father, Jack Monroe, myself and I do not know whether Leroy Benner was along. I do not know the reason of our going back to look at the land the second time. I had passed by the land frequently as it lies near the road, but I was not familiar with it.

Q. You went to Susanville to make your final proof; you remember that distinctly, don't you, of course? A. Yes.

Q. You went into the Land Office and made a statement of some kind, yourself and witnesses, didn't you? A. Yes.

Q. And then you say that as soon as you did that you came out and went into a room and made your deed? A. No, no.

I do not know whether that room was in the same building or not. [552]

Q. How long after you had made your final proof

(Testimony of W. J. Gardenhire.)

was it that you made your deed?

A. That was on the second trip.

Q. How long after you received this receipt was it that you made your deed, that you conveyed the land? Was it the same day?

A. Yes, it was the same day. I do not know who gave me the $100, but I think it was handed me in the hotel office in Susanville.

Q. Was it not the lawyer's office?

A. Yes, it was in the lawyer's office.

Q. Was it not three of four days after you had made your final proof that you made your deed and got the $100?

A. No, I believe it was the same day.

Q. Are you as certain of that point as you are to the conversation that you had with Jack Heppe touching the purchase of this land? A. Yes.

Q. That is the conversation with Jack Heppe where you say he made a proposition to you?

A. Yes.

Q. What was the proposition?

A. To go out and take up this claim and make $100 and expenses. Jack Heppe did not tell me he would buy the land or that he would bring someone to me that would buy the land. He said we could dispose of it. [553]

Q. Did he tell you to whom you would dispose of it? A. This man, Tuman, I believe.

Q. Did he tell you that he would dispose of it to Tuman?

A. Well, now, I couldn't say; it has been so long.

(Testimony of W. J. Gardenhire.)

Q. Do you remember whether or not he told you that he would sell it to anybody or that you could if you wished to sell it, dispose of it?

A. No, all I knew, I would get rid of it. He said that if I took up the land I could dispose of it for $100 profit, but he did not say who would be the purchaser.

Q. Did you have any understanding with him or any conversation with Jack Heppe at that time or any time prior to going to Susanville and filing your affidavit, that you would when you got your land sell it either to Jack Heppe or to anyone that he might produce? A. I don't understand.

Q. That is a little involved question; I will change it a little for you: Did you have any talk with Jack Heppe to the effect that you would sell that land to Jack Heppe or to any person that he might produce? A. Yes.

Q. What was said in that respect?

A. Well, I'm darned if I know, I couldn't say. He did not say to me, "Gardenhire, you take up the land and I will buy it from you," or "Take up the land and I will bring somebody that will buy it of you and give you $100." The way I understood it, he would dispose of it some [554] way, and that was all I did understand about it.

Q. Did you understand or get the impression from what took place between you and Mr. Heppe that you were obligated and bound to sell that property to anyone that he, Heppe, might indicate?

A. Yes; I believe, yes.

(Testimony of W. J. Gardenhire.)

Q. You did. So that if I had come along and offered you a buyer you could not have sold it to the buyer? A. No.

Q. In other words, that you were taking up this land for the benefit of Jack Heppe? A. Yes.

Q. Do you remember making an affidavit when you filed on this land? A. Yes.

Q. I want to read a portion of it to you: "That I do not apply to purchase the land above described for speculation, but in good faith to appropriate it to my own exclusive use and benefit; and that I have not, directly or indirectly made any agreement or contract, or in any way or manner, with any person or persons, whomsoever, by which the title I may acquire from the Government of the United States may inure in whole or in part to the benefit of any person except myself." That was not true, was it?

A. No, sir.

Q. Do you remember having been asked this question and answering it as follows: "What do you expect to do with this land and the lumber on it when you get the title to it?

A. To hold it, it may be valuable some day." Do you remember being asked that question, and making that answer? A. Yes. [555]

Q. Were you asked this question: "Do you know of any capitalist or company which is offering to purchase timber land in the vicinity of this entry? If so, who are they, and how do you know them? A. No, sir." Did you make that answer?

A. Yes, sir.

(Testimony of W. J. Gardenhire.)

Q. You did not regard Jack Heppe as a capitalist? A. No.

Q. Do you remember having been asked this question: "Has any person offered to purchase this land after you acquired title? If so, who, and for what amount? A. No, sir." You remember that, do you? A. Yes.

Q. Do you remember having been asked this question and making the following answer: "Q. Did you pay out of your own individual funds all the expenses in connection with making this filing and do you expect to pay for the land with your own money? A. Yes, sir.

Redirect Examination.

I do not think I paid my expenses on either the first or second trip to Susanville. [556]

Testimony of James D. Baker, for Complainant.

JAMES D. BAKER, called as a witness for complainant, testified as follows:

I am 63 years old and reside at Greenville, Plumas County, California. I lived there in 1902. I am a miner by occupation. At that time I was running the Prattville Hotel for Mr. Head. At that time my family was living there with me. My family consisted of my wife and two daughters—Margaret J. Baker and Mayme H. Baker. My daughter Mayme is now Mrs. Thompson, and my daughter Margaret is now Mrs. Stover.

Q. At the time you came to take up this timber land, Mr. Baker, will you just state how it was you

(Testimony of James D. Baker.)

came to take up his timber land?

A. Well, I met Jack Heppe and he told me that there was a chance to make, I think it was $100.

Q. Did he say anything about whether or not your expenses would be paid if you took up the land?

A. I forget about that; I couldn't say.

Q. How were you to make the $100, Mr. Baker?

A. Well, by turning it over.

Q. That is, turning over the timber land that you were to take up? A. Yes.

Q. Where did you have this conversation with Mr. Heppe—do you remember where you were at that time?

A. I think it was between Prattville and Greenville on the stage, I think it was, but I would not be positive about that; it is a good while ago. Subsequently, as a result of this conversation, I took up some land. The land I took up was on the other side of Prattville, between Lassen, Butte and Prattville, [557] northwest of Prattville. When I went to look at the land I think Heppe went with me on the trip, also my wife and daughters. After looking at the land we came back to Prattville.

Q. Subsequently you filed on the land, did you not —you filed on this land that you took up?

A. Well, we went to Susanville and there was something wrong about the land and we had to come back.

Q. You had to come back? A. Yes.

Q. Did you go out again to look at the land?

A. Yes, we went out with Elam, I think.

(Testimony of James D. Baker.)

Q. Did you have any discussion with Mr. Heppe at all in regard to the description that he gave you being wrong, or something about the entry he gave you being wrong? A. Not that I know of.

Q. Then after you went out with Mr. Elam and looked at the land, you went to Susanville again?

A. Yes.

Q. On that trip you took with you your wife and daughters? A. Yes.

Q. And at Susanville you filed on the land?

A. Yes.

Q. Your daughters also filed on the land at that time?

A. Yes. When time came we went to Susanville again to prove up on the land. At that time we paid the Land Office some money. I don't remember exactly how much it was. It was [558] $2.50 an acre, 160 acres.

Q. Where did you get the money with which you paid the Land Office, Mr. Baker?

A. I got it from the Susanville Bank, the Lassen County Bank. I had a mine on the North Fork and I mortgaged it for to get the money, for myself, for my wife and daughters.

The MASTER.—"Q. Who did you mortgage it to, to the bank?

A. Yes, the Lassen County Bank.

Mr. PIER.—Q. That is, the mortgage was drawn up to the bank?

A. Yes. I think Pardee prepared the mortgage. I would not be certain about having a talk with any-

(Testimony of James D. Baker.)

body about getting the money from the bank before I went to Mr. Pardee's office. There was so much talk that I forget half of it. I took the mortgage to the bank. When I took it there the cashier was there. I don't remember anyone else being there at that time. I think Tuman was in Prattville at the time we were there to prove up on the land.

Q. Had you had any talk with Tuman about the money that you were to use to pay for the land before you went over?

A. I could not tell you at the present time.

Q. What is your best recollection on that, Mr. Baker?

A. I think that Mr. Tuman told me that I could get [559] the money out of the bank in that way.

Q. You could get the money out of the bank?

A. To my recollection, I think so.

Q. That is what he told you?

A. I think so; now, I ain't certain about that, but I think so. After proving up on the land we returned to Prattville. I sold the land; I deeded it over to Gregory. I delivered the deed to and talked with Tuman. At the time I delivered it to Tuman he paid me $100 for the land.

Q. Did he return you your mortgage at that time?

A. Well, I would not be certain about that, but I think he did. I don't know whether my mortgage had been recorded upon the mine or not. I borrowed the money from the bank the day I proved up and I got the mortgage back the day I deeded the land to Tuman.

(Testimony of James D. Baker.)

Q. Your final proof shows that you made your final proof on the 23d day of August, and your deed is dated the 25th of August, so that it was just two days after you proved upon the land that you deeded the land to Gregory and delivered the deed to Mr. Tuman?

A. I think that is right, Mr. Pier.

Q. Do you know who brought the mortgage back from the bank to Mr. Tuman to deliver to you at the time you sold the land? [560]

A. No, I don't remember who it was. I don't remember whether I brought it back myself or not. In making these various trips to Susanville I had some expenses to pay.

Q. Did you pay those yourself?

A. I think I paid all expenses; I might have paid them and then got them back again, but I know they were all paid, all the expenses.

Q. During the trips was any money advanced to you, during the taking up of this land to cover your expenses, while you were taking up the land?

A. I think there was. I got that money from Head, in the Prattville Hotel. I did not give any note for that money that I got from Head, or I O U's of any kind. Of course, I could get what money I wanted from Head. I could not tell whether Head advanced his own money or someone elses. I don't know whether it was Head's or Tuman's or the Curtis, Collins and Holbrook's. At the time I started to take up this land I did not expect to use my own money to pay for the land. I

(Testimony of James D. Baker.)

don't think this conversation that I had with Mr. Heppe contemplated at that time, the taking up of land by my wife and my two daughters. I did have a discussion with Willard C. Brown in relation to my daughters' taking up land. He stated that I might as well have my daughters and my wife take up land as long as I was taking it up. [561]

Q. Did you tell him what the proposition was that Mr. Heppe had made to you during this discussion?

A. We talked it over; I forgot just exactly what was said. After I spoke to Heppe then I had seen Brown and we talked over it, and the whole bunch of us got in together and took the land up. Mr. Brown thought it was all right. He was running a drug store then.

Q. Did Mr. Brown tell you whether or not your daughters and your wife could take up land get this $100 profit for taking up the land?

A. Yes, I think he did.

Q. Did he tell you whether or not the money would be furnished to pay for the land when it came time to prove up? A. Yes.

Q. When it came time to go out and look at the land—

The MASTER.—"See how unfortunate it is you have brought it out that way, Mr. Pier; the whole thing, is leading; it is all your testimony in a sense. While the witness is rather reluctant and slow of speech, I have no doubt you could have got it from him. When I come to that testimony I cannot give it very much weight, and I ought to be able to give

(Testimony of James D. Baker.)

the testimony of the Government, and I need to give it, all the strnegth that it has; of course, the case has to be proved clearly. So be careful to avoid any leading or suggestive questions. The evidence is in these questions, and the answer amounts to nothing. I simply want to call your attention to that. [562]

Mr. PIER.—"I tried to get that testimony after asking several questions, and it came out hesitatingly, and I wanted to get that out.

The MASTER.—"You cannot get the heart of it out that way; it does not do much good to get it out by leading.

Mr. PIER.—"The Supreme Court has said where we have a defendant on the stand that we can lead him and are entitled to lead him.

The MASTER.—"Those are merely nominal defendants.

Mr. PIER.—"The Supreme Court in the Budd case said we had a right to do that.

The MASTER.—"What I want you to appreciate, Mr. Pier, is, I am sitting here as a Judge and jury to decide this matter, and I have got to satisfy my conscience about it, and I cannot do it with leading questions unless the rest of the evidence frames up satisfactorily.

Mr. PIER.—"Q. After you had this conversation with Mr. Brown and this previous conversation with Mr. Heppe, will you state what arrangements you made with Mr. Heppe to go out and look at the land. You stated, I believe that Mr. Heppe took you out to look at the land. How did you make your ar-

(Testimony of James D. Baker.)

rangements to go out to look at the land, Mr. Baker?

A. Well, they paid all expenses, you see, and we went out and looked at the land."

I don't remember whether I had any more conversation with Heppe fixing the date when we would go out and look at the land. I might have had such a conversation. [563] We got a conveyance from Head, from the Prattville Livery Stable, to go out and look at the land. When we went out to look at the land, I think Heppe drove, but I am not sure. I took my two daughters to look at the land. I think Heppe showed them their land, also, but I am not certain about that.

Q. You know whether or not they looked at the land so that they could file on the land at that time, don't you? A. How do you mean?

Q. You know whether they were prepared to file on the land at the time, don't you? A. Yes.

Q. You know whether or not Heppe understood that they were taking up land or not at that time, didn't you? A. Yes.

Q. After you went out to look at the land you went to Susanville, as I understand it, to file on the land?

A. Yes. I think I got the money from Head to cover our expenses on the first trip to Susanville. When we went to Susanville there was something wrong with the descriptions of the land and we had to go out and look at some other land. The next time, I think, Elam showed us the land. On that trip three or four of us went out on horseback hunting for the land. I am not sure whether Heppe was

(Testimony of James D. Baker.)

along on the second trip, or not. I did not pay either Heppe or Elam anything for showing me the land. Nothing was said about my paying [564] either of them for the land that I know of. I didn't expect to ever pay them anything for showing me the land.

Q. When you came to get your money, do you remember how much money it was that you got?

A. I think I got $1,600 or something like that. I gave part of it to my daughters and my wife. I gave it to them in the Land Office, outside of the door. I passed them the money.

Q. At the time when you sold the land to Mr. Tuman I mean did your business with Mr. Tuman, in regard to the sale of the land, was there anything said about your land not being a full 160 acres, in figuring out the purchase of the land?

A. I can't remember anything about that."

My wife's land never went to patent. I think the patent that I got only covered 80 acres. I think I have seen the patent to my land.

Q. It would be a document like that, only the black would be white and the white would be black; this is a photographic copy of the patent; of course, it is a little smaller size paper than the one that was issued. A. Yes, I think I gave that to Tuman.

Q. The patent to that land was only 80 acres. Do you remember how it was that your claim was cut down from 160 to 180 acres?

A. Well, there was a part of it that was up on Mt. Lassen, it did not amount to anything, and I had it cut off.

(Testimony of James D. Baker.)

Q. Who instructed you in regard to cutting off that 80 acres? [565]

A. I would not be certain whether it was Tuman or Heppe or Elam, I could not tell you.

Q. But you were instructed by one of them to cut off the 80 acres, were you? A. I think so; yes.

Q. Were you yourself, at all, personally interested on what was on the land, whether it was good timber land or not, at the time you took it up? A. No.

Q. Was there anything said at the time you deeded the land, after this transaction with Mr. Tuman, about the price that was paid you in regard to the fact that you were only delivering half, that is, 80 acres instead of 160 acres.

A. Not that I know of. I got the $100 just the same for my claim as my two daughters did. When I sold my claim I sold my daughters' and my wife's claims at the same time and received for each claim, $100 and expenses.

At the time I delivered the deeds to Mr. Tuman I think I received $400. I did not deliver the deeds to Tuman but to Gregory.

Q. The deeds ran to Gregory but you gave them to Mr. Tuman, didn't you?

A. Him or Bob Costar, I am not certain which. Costar was the Notary Public.

We executed the deeds before Robert Costar. Tuman told us to go to Robert Costar and execute the deeds. [566] I think Tuman handed me the $400 to pay for the claims going between the Pratt ville Hotel and Costar's store or office. After having

(Testimony of James D. Baker.)

these talks with Mr. Heppe and Mr. Brown I think I had some talks with my daughters about taking up the land. I told them they could get $100 apiece if they located on the land, and they told me they would do it for the $100.

Q. This was the $100 that you received for your claims when you sold the land was just as you expected it when you started out, was it not, Mr. Baker? A. Yes.

Cross-examination.

This first conversation I had with Jack Heppe, I think, was between Prattville and Greenville. I am not certain whether it was right in Prattville, but I am almost certain it was between Prattville and Greenville. It was quite a while ago. It took place on the stage; I was on the stage and he was on a private team, or he was on the stage and I was on the private team.

Q. That being so, can't you remember the point? The stage would not stop for you to hold a conversation with Jack Heppe, would it?

A. No, but you know how it is in that country, you meet a stage, and they will always stop to see a team because there is only very little travel on the road. I don't know how long that conversation was that I had with Jack Heppe. It wasn't very long. [567]

Q. Were you still on the stage and he still in his vehicle?

A. No, I think we got out at the watering-trough where they stopped to water; I think that is where

(Testimony of James D. Baker.)

we met and talked there a while. Heppe introduced the subject. He asked me if I wanted to take up some land, and I says, "Where?" And he said, "You can take it up anywhere around; you can make $100 if you take up 160 acres," or something to that effect. There might have been a lot more said, but I don't remember. I said, "All right," in reply. I meant by the use of the expression "all right" that I would take up the land.

Q. And that you would sell it to him for $100?

A. He said there was $100 in it if I would take up the land.

He might have said a whole lot more, but I don't remember what.

Q. As you recollect the substance of that conversation, did it embody a promise upon your part to sell it to Mr. Heppe or anyone that he might indicate, for $100?

A. I don't remember anything about that.

Q. Can't you recollect as to whether or not you promised and agreed right then and there to sell it to him when you took it up?

A. I can't remember everything that happened right at that time; it is a good while ago.

Q. I quite appreciate it is a good while ago. The substance of what you can recollect as to this conversation between you and Heppe, no matter where it took place, but which you say you think took place between Greenville and [568] Prattville, was that Mr. Heppe said to you or asked you if you wanted to take up some land, and you asked some

(Testimony of James D. Baker.)

question about it and he said there was $100 in it, and you said "All right." That is the substance of that conversation as you recollect it?

A. Yes.

Q. Then you parted? A. Yes.

I am certain that that conversation was prior to our going out to look at the land. I could not say when we next met. The first time we went out to look at the land Heppe accompanied me with my wife and two daughters.

"Q. How did you come to meet Mr. Heppe?

"A. I met him there at Prattville.

"Q. How did you come to make the appointment to go to look at the land?

"A. Well, he was there in the Prattville Hotel, and I was stopping there too, and he says, 'we will get a team and go out and look at the land.'

"Q. Did he give you the description of the land that each of you, you, your wife, and your daughters would locate? A. Yes.

"Q. Have you any idea or can you approximate whether that was one, two or three days after you had had your talk with Mr. Heppe before you went to look at the land?

"A. I think it must have been a month after that.

"Q. A month after it before you went to look at the land? [569]

"A. I think so; I could not be certain about that, It is pretty hard to remember as to that.

"Q. How long after you had your talk with Mr. Heppe touching the taking up of this land, that you

(Testimony of James D. Baker.)

had your conversation with Mr. Willard C. Brown?

"A. I think it a few days.

"Q. Did Mr. Brown tell you as to whether or not he had then entered any land himself?

"A. I could not say about that.

"Q. Just repeat once more your conversation with Mr. Willard C. Brown.

"A. Well, he told me that it was just as well to get my wife and two daughters to locate with me.

"Q. Can't you remember what led up to that remark? A. I cannot.

"Q. Can't you remember as to what brought about that conversation?

"A. Well, we got talking first; he spoke about Heppe.

"Q. What did he say about Heppe?

"A. I could not tell you what he said, not now.

"Q. Can you tell us the substance of what he said about Heppe?

"A. Well, he got talking about that Mr. Heppe was into this land business and there was a chance for us to make a little money.

"Q. Now, you remember that he said that, do you?

"A. Well, I think I do, something to that effect; I can't tell you just exactly the conversation. [570] I can't remember all the facts. If I could I would say so. It was about a month or so after I had my talk with Willard C. Brown that I went out to take up the land. My talk with Brown was very soon after my talk with Heppe. Before I had

(Testimony of James D. Baker.)

this talk with Heppe I had known him three or four years. I have talked to Jack Heppe several times within the last ten years. I don't know as I have ever discussed this case with him, only he said he was down here on this case. I have never talked with him as to where I had my first conversation with him. I never discussed any of the facts of it with him. When there was something wrong with my entry I went out with Elam the second time. I would not be positive about that but I am pretty sure it was Elam.

"Q. How did you come to go out with Elam the second time?

"A. Well, he was in the same business, I suppose, as the other fellow.

Mr. SHURTLEFF.—I ask that that be stricken out.

The MASTER.—Strike that out. Don't tell us what you suppose.

Mr. SHURTLEFF.—"Q. What do you know about that?

"A. Well, all I know about that is that I went out with Elam.

"Q. Don't you know how you came to go out with him?

"A. He went to the barn and got saddle-horses.

"Q. What led up to your going out with Mr. Elam?

"A. I couldn't tell you, it is so long ago."

I don't remember whether we went to him or he came to us. I don't remember whether we dis-

(Testimony of James D. Baker.)

cussed this land transaction with him, or not. [571] I don't think my wife and daughters went with me on the second trip. I think I had heard of the Curtis, Collins and Holbrook Company at the time I made my entry on January 9, 1902. I heard talk about them around town there I think I met Mr. Holbrook, Jr., once or twice while I was there. I never met the old Mr. Holbrook. I never met T. D. or E. S. Collins to my knowledge, or D. G. or J. G. Curtis.

"Q. But you are certain that you had heard that the Curtis, Collins & Holbrook Company at the time you made your entry on June 9, 1902, were a company out for the purchase of land? A. Yes.

"Q. How came you to give that mortgage on your mine?

"A. Well, it was a kind of bogus mortgage, I guess.

"Q. That was the real purpose of it, was it not?

"A. Yes.

"Q. To conceal something? A. Yes.

"Q. You knew this when you took up this timber land, that you were violating the law, did you?

"A. I did not at the time. I was satisfied afterwards that it was.

"Q. When did you become satisfied of that?

"A. Oh, some time after.

"Q. What makes you say now that was a bogus mortgage? A. What makes me say that?

"Q. What makes you say that was a bogus mortgage?

(Testimony of James D. Baker.)

"A. Well, because I know it was. [572]

"Q. Well, then, why? Just tell us why that was a bogus mortgage?

"A. Well, I suppose it was for cloaking things over.

"Q. You knew that when you made it, did you?

"A. I think so.

"Q. What was it that you wanted to cover up?

"A. I could not tell you that.

"Q. When did you have the talk touching the furnishing of this money?

"A. At Prattville.

"Q. I mean after you looked at the land or before?

"A. I don't remember, but I think it was after.

"Q. Who did you have that talk with?

"A. Tuman.

"Q. Do you remember ever having had any talk with Tuman prior to your going to Susanville to make your location?

"A. No, I think not. That is, I talked to him in Greenville, but not on any land proposition.

"Q. Do you remember having any talk with him at all prior to your making that entry, touching this land? A. No.

"Q. But you do recollect having a conversation with him subsequently A. Yes, afterwards.

"Q. Do you remember any conversation with Mr. Tuman touching the purchase of this land from you? A. No.

"Q. Never had any such conversation with him?

(Testimony of James D. Baker.)

"A. No, the only conversation that ever we had was when he paid me this money. [573]

"Q. Then who did you arrange with for getting the money to pay for the land—that is, the conversation you refer to—I thought you meant the $100 you got. When did you have this conversation about furnishing you this money?

"A. Well, it must be at the time that I deeded the land over.

"Q. No, I mean the money that you used to make final proof. You said, as I understood you, that you made some arrangements?

"A. Well, the conversation was between Tuman and I.

"Q. When was that conversation?

"A. It was when I went over to prove up on the land at Susanville.

"Q. Had you discussed that matter with him prior to that time?

"A. No, I think not, not at that time; I think it was in Susanville that that agreement was made.

"Q. At the time that he said he would furnish you the money, was there anything said then about your giving this mortgage?

"A. I can't remember about that. Pardee was the man that drawed the mortgage, and I went to the bank and drawed the money on the mortgage.

"Q. I will ask you this question: Prior to that time had you made any promise to Mr. Tuman to convey this property to him?

"A. I don't think I did. [574]

(Testimony of James D. Baker.)

"Q. When you came to conclude the transaction and make the sale, did you discuss it at all with Mr. Heppe?

"A. I could not tell you that either, whether I did or not; there was so much talk about the land proposition that I forget about it.

"Q. This money that you got from Mr. Heppe the first time that you went over to look at the land, how came you to get that money? Did you simply draw it down or did you go to him, or did somebody tell you you could get it from him?

"A. I think there was somebody told me there was money there and to go and get it.

"Q. Who told you?

"A. I could not tell you that.

"Q. Are you certain that you were told that at all?

"A. Well, I think I was, but I don't know who it was, whether it was Elam or Heppe or Tuman.

"Q. You were told that, of course, before you went to get the money, before you went to Susanville the first time—before you went to look at the land, as I understand, you went to Mr. Head to get some money—was it to look at the land or to go to Susanville?

"A. Well, I will tell you how that was. I could go to Head and get money any time. I went there and I think he told me that there was money there, that I could get.

"Q. When was the first time that you went to Mr. Head for money, that is, for what purpose?

(Testimony of James D. Baker.)

"A. The first time I went over.

"Q. The first time you went to Susanville?

"A. Yes. [575]

"Q. Were you working for Mr. Head then?

"A. Yes, I think I was. I used to do carpenter work and work for him.

"Q. You think somebody told you that you could get the money from Mr. Head? A. Yes.

"Q. But you cannot recollect who it was?

"A. No, I cannot.

"Q. Are you sure that it was either Elam or Heppe or Tuman?

"A. Well, I think it was either one.

"Q. I don't ask you what you think, I am asking for what you remember and what you know?

"A. Well, I don't know.

"Q. You don't know?

"A. It might be Head told me. When I went to my wife and daughters to talk to them about this matter; I don't remember what I told them now. I don't remember whether I talked to them individually or all together. I told them there was $100 a piece for them if they wanted to take up the land. I told them where they could get the $100 from and that they would get it from that company or from Tuman. I could not tell just exactly.

"Q. That company; who had told you anything about that company prior to your going to look at the land?

"A. Well, I said in the first place that Heppe

(Testimony of James D. Baker.)

told me about this money and about the land business.

"Q. Now, you are talking about a company, who told you about the company?

"A. About what? [576]

"Q. About the company?

"A. Heppe—Heppe or Elam or Tuman, I would not be certain which one.

"Q. Can you remember as a distinct fact, Mr. Baker, that anyone discussed with you a company prior to your going to Susanville to take up the land?

"A. I am certain that some of these three did.

"Q. About a company. I asked you if you discussed the matter with Mr. Elam at the time you went up and prior to going up to look at the land, and you could not remember whether you had or not? A. No.

"Q. I asked you if you discussed it with Mr. Tuman and you thought not, but you though you had discussed it with Mr. Heppe and endeavored to give all that conversation. If you have anything to add to that conversation, let us have it.

"A. The only thing that I know, when I met Heppe, he told me there was $100 if I would take up this 160 acres, and then after that I got talking to Brown and Brown says 'You might as well get your wife and your daughters,' and I spoke to them about it. Now, whether I spoke to them one at a time or all together, I don't know.

"Q. I don't care about that. That is all that you

(Testimony of James D. Baker.)

have any definite recollection of having said either to Heppe or to your wife or your daughters?

"A. Yes, that is all at the present time.

"Q. Mr. Baker, looking over that situation, as you recollect it, after you had made your final proof did you feel at liberty to sell that land to whomsoever you pleased? [577] A. No.

"Q. Who did you promise to sell it to?

"A. Tuman.

"Q. When had you made that promise?

"A. Well, there was not a promise—only an agreement that Heppe and I had.

"Q. That was the agreement that took place before you went to look at the land?

"A. Yes, I think so; yes. I remember going to the Land Office to make my final proof. They asked me a lot of questions. I think that looks like a photograph of my signature.

"Q. Do you remember at the Land Office of having been asked this question: 'Has any person offered to purchase this land after you acquired title? If so, who, and for what amount? No.'

"A. I don't remember that.

"Q. You don't remember that? A. No.

"Q. If you did make such an answer to such a question, was that correct or incorrect?

"A. If I did, I guess it was right.

"Q. If you made that answer at that time it was right? A. Yes.

"Q. You say you sold that land to Mr. Gregory. Do you recollect that, that Mr. Gregory was named

(Testimony of James D. Baker.)

in the deed that you signed? A. Yes.

"Q. What did you mean, Mr. Baker, when you said that you were not personally interested as to whether that [578] land had any timber on it, or not? A. Well, it didn't matter to me.

"Q. Why?

"A. Well, I don't hardly know why."

Redirect Examination.

I remember the mortgage that I made. I think I suggested the mortgage myself. I don't remember what the conversation was that caused me to want to give a mortgage.

"Q. At the time you were taking up this land, you understood that Elam or Heppe were working for Tuman, did you not?

"A. Yes, that is working for that company, Curtis, Collins & Holbrook.

Mr. PIER.—"Q. Was this money that Head let you have in payment for any work you had done for him?

"A. No, I think not. About that money business, I would not be certain whether it was Head or Bunnell, because both of them were there at Prattville at the same time, I ain't certain now which of them it was.

The MASTER.—"Q. You mean the young Bunnell?

"A. Well, the old man, he was not running the hotel.

"Q. That is what I am asking you, which of the two Bunnells was it?

(Testimony of James D. Baker.)

"A. I think it was the young man.

Mr. PIER.—"Q. That is the young Bunnell that ran the hotel in Prattville there, that ran a small hotel there in Prattville? [579]

"A. Yes, I am almost positive that it was Head that gave me the money."

Recross-examination.

Mr. SHURTLEFF.—"Q. Where did you get the understanding that Heppe and Elam were working for what you term the company?

"A. Mr. Heppe told me so.

"Q. Where did he tell you that?

'A. Somewhere in Plumas County.

"Q. At what time? A. About what time?

"Q. Before or after you took up the land?

"A. It must be before.

"Q. What is your recollection about that?

"A. Well, my recollection is that as I stated before that he told me about how I could take up this land.

"Q. You have attempted to repeat that conversation. Now, you have stated the conversation. Now, you say you had an understanding from Heppe that he was working for the company. What was it?

"A. I said that I understood myself that he was working for the company.

"Q. Where did you get that understanding?

"A. Well, I guess I heard him talking about it around the town.

"Q. Who did you ever hear him talking to about it?

"A. I don't know—several.

"Q. Just give us one, one man that you heard Jack

(Testimony of James D. Baker.)

Heppe state to that he was working for the company?

"A. I couldn't say any more than from my own [580] conversation.

"Q. You think that conversation took place before you went to look at the land?

"A. Yes, I think so; yes.

"Q. You had an understanding or thought or knew that this company was out to purchase the land?

"A. I could not say that,—that they were out to.

"Q. That they were purchasing timber land in that section? A. Yes, I was satisfied of that.

"Q. Now, you remember of having been asked this question at the Land Office: 'Do you know of any capitalist or company which was offering to purchase timber land in the vicinity of this entry? If so, who are they, and how did you know of them?' To which you replied, 'I have read in the papers that T. R. Walker is purchasing timber land through that country.' Why was it at that time that you did not mention the fact that the Curtis, Collins and Holbrook Company were out, as you say, for the purchase of lands, as you understood?

"A. I don't think I ever mentioned that.

"Q. But you were asked that question?

"A. I don't think I ever mentioned that T. D. Walker was.

"Q. You think that answer is down wrong?

"A. I don't remember anything about it.

"Q. Are you willing to say you did not make the answer to that question?

(Testimony of James D. Baker.)

"A. I could not say now for certain.

"Q. Isn't it a fact that you heard very little, indeed nothing about the Curtis, Collins and Holbrook Company [581] prior to your taking up this land?

"A. Very little before; yes.

'Q. Had you heard a thing that you can remember off?

"A. I don't remember but very little about them.

"Q. But, Mr. Baker, do you recollect a single instance prior to your taking up this land, of ever having heard of the Curtis, Collins & Holbrook Company? A. Yes.

"Q. That was before you took it up?

"A. Yes, shortly before, a short time before.

'Q. Suppose it should transpire that this company was never organized until after June 23d, 1902, the time that you are talking about, and that there was no such linking of names as you are describing here, then what would you say about anything touching the Curtis, Collins & Holbrook Company?

"A. The only thing that I ever knew about them is what Heppe or Elam or Tuman—I don't know as Tuman—either Heppe or Elam—Elam or Bill Brown —that is the only thing that I know of.

"Q. I am not denying but what you had some conversation about the company at some time. But I want to fix the time when you had that particular conversation, whether you recollect distinctly whether it was before you made your initial entry or afterwards?

"A. Well, it was before, of course.

(Testimony of James D. Baker.)

"Q. You are sure of that?

"A. Yes, I am quite sure of it.

"Q. Notwithstanding that fact that if it should [582] subsequently transpire that there was then no such company? A. Yes, I think so.

"Q. You still think so? A. Yes.

"Q. What did Jack Heppe or Mr. Elam or whoever it was say to you about this company?

"A. Well, I don't know what it would be any more than the conversation as I said before, that if I located this land that I would get $100.

"Q. How did the company come into that conversation—in what way?

"A. Well, what Heppe told me.

"Q. What did Heppe tell you?

"A. He told me if I would take it up I would get $100.

"Q. Did he say where you would get that $100 from?

"A. I couldn't tell you that, but it was good for $100 if I would take it up.

"Q. That is the substance of what transpired?

"A. After, of course, I know where it was coming from.

"Q. Where did you learn that?

"A. Well, from some of these, Elam or Heppe.

"Q. How long after?

"A. I could not tell you.

"Q. Before or after you made your final proof?

"A. It must be before.

"Q. Before or after you made your application?

(Testimony of James D. Baker.)

"A. Before I guess.

"Q. You guess before?

"A. Yes, I think it was. [583]

"Q. Either Heppe or Willard C. Brown or Elam told you about this company? A. Yes."

Then follows chain of title from James D. Baker to Charles E. Gregory and from Charles E. Gregory to the Curtis, Collins & Holbrook Company.

Deposition of James D. Baker.

JAMES D. BAKER'S deposition, taken subsequently to his giving his testimony, is read in evidence and an abstract of the same is as follows:

I testified in San Francisco before the Master in Chancery in these cases. Thomas R. Baker is my son. In 1901 and 1902 he was living with me. My son, Thomas R. Baker, at the time I filed on my land also filed on land. I don't think he ever proved up on it.

"Q. Do you know whether or not he ever received any money on account of that land?

A. Well, to my recollection, he did.

Q. What is your recollection on that point, Mr. Baker?

A. Well, he was with the bunch of us, and I could not say for certain how much money I got from Tuman, but if he got the money he got it through me or my wife; I might have given it to my wife, I would not be certain.

Q. Now, your son has testified in his testimony in San Francisco that he received $100 from you on

(Deposition of James D. Baker.)

account of this land. If he did receive that amount from you, where did you get that money?

A. I got it from the Lassen County Bank. [584] In making my arrangements to get the money from the Lassen County Bank I mortgaged a claim over the river. That is the bogus mortgage I mentioned in my testimony. I would not be certain who that arrangement was made with; I could not remember whether it was made with George Tuman or not. I didn't get the money, the $100, that I paid Tom Baker at the time I got this money from the bank on the bogus mortgage. I think I got the money that I gave to Tom Baker after we proved up. It was at the time I executed the deeds to Robert Costar that I got the $100 that I paid Tom Baker. I could not say whether I got money from Tuman on more than one occasion or not. I got money before I executed the deeds, but it seems to me I got it in the Prattville hotel, from Head or Bunnell. I would not be certain which. I know I got some money there to pay expenses.

"Mr. PETER.—Q. You said that you got $400 in Prattville from Tuman, did you?

"A. I would not say how much it was.

"Q. You could not say?

"A. No, but all the money that was got come through me."

I think that all the money I got came through Tuman or Head or Bunnell or the Lassen County Bank.

"Q. Well, there was no one else in this country except Tuman, Head, Bunnell, Heppe and Elam that

(Deposition of James D. Baker.)

you knew of that were taking any interest in these land locations?

"A. That is about all I know of at that time."

I never had any conversation with D. G or J. G. Curtis, T. D. or E. S. Collins, Irving F. Moulton, C. H. Holbrook, Sr., C. H. Holbrook, Jr. I met Charlie Holbrook once but I have [585] forgotten whether I talked about that or not. I met Tuman once in the bank but I could not say whether it was when I got the money or not. I don't know who suggested the mortgage. It might have been myself. I don't think Mr. Tuman was present at the time Mr. Pardee drew up the mortgage. I testified at the time I was in the city that they were a corporation at that time. While I understood they were a corporation, I would like to withdraw it.

"Q. You want to correct your testimony in that respect? A. Yes.

Mr. PIER.—"Q. As I understand it you had heard of Curtis and of Collins and of Holbrook as being operating together.

"A. Yes. That is what I took to be a corporation." [586]

Testimony of Mrs. Mayme H. Thompson, for Complainant.

Mrs. MAYME H. THOMPSON, called as a witness for complainant, testified as follows:

My name is Mayme H. Thompson. Before I was married my name was Mayme H. Baker. I am the daughter of the witness who was on the stand yester-

(Testimony of Mrs. Mayme H. Thompson.)

day (James D. Baker). At the present time I reside at Greenville, California. My father also resides there at the present time. I took up some timber land in Plumas County about 10 years ago.

"Q. I will tell you the date on which you filed on the land. That was on the 9th day of June, 1902, according to the Land Office records. In that summer you were living at Prattville, were you? A. Yes."

I was staying there with my father and mother and my sister, who is now Mrs. Stover. She was then Margaret J. Baker. When we came to take up the timber land, Mr. Jack Heppe showed me the land. I had no conversation with anyone but my father. I did have a conversation with him relative to the timber land that he took up. He told us that if we took up the land we could get $100 for it.

"Q. What were you to get the $100 for doing?

"A. For taking up the land.

"Q. Were you to keep the land after you took it up? A. No.

"Q. Afterwards you were to turn it over to somebody, were you?

"A. We were to turn it over to someone.

"Q. After that you were to get $100; is that correct? [587] A. Yes.

"Q. Did you have any talk with anybody else about the timber lands besides your father at all?

A. No.

After looking at the land we went to Susanville to file on the land and we were sent back. There was something the matter. We had not looked at the

(Testimony of Mrs. Mayme H. Thompson.)

land. So we went back to Prattville and looked at the land, and went back to the Land Office at Susanville to file on it. After filing on the land we returned to Prattville and when time came we made final proof on the land at Susanville.

On these various trips to Susanville I paid out no money myself on account of my expenses. I don't know where the expenses came from on those trips. I don't know anything about that; papa paid them as far as I know.

When it came time to make final proof I paid the Land Office some money, in the neighborhood of $400 which my father gave me. I don't know where my father got the $400. After making final proof I returned to Prattville.

"Q. Have you got the land still, Mrs. Thompson?

"A. No.

"Q. What did you do with the land?

"A. I sold it to someone."

I signed a deed at Prattville before Mr. Robert A. Costar, a notary public. I don't remember who told me to go over to Mr. Costar's office and sign the deed. I know that I never talked with anyone at any time during the taking up of these lands, but papa. I received $100 for the land when I sold it. I am not sure but I think papa handed me the $100. I don't remember [588] whether it was in coin or paper money, or anything of that kind. I don't know who I gave the deed to after I signed it.

"Q. This $100 you received was just what you expected when you started out to take up the land, was

(Testimony of Mrs. Mayme H. Thompson.)

it not, Mrs. Thompson? A. Yes."

"Q. And it was in accordance with your understanding with your father that the whole thing was carried out? A. Yes.

Mr. SHURTLEFF.—"That question is objected to.

The MASTER.—"I will sustain the objection."

My father did not tell me at any time where he got the money to pay the expenses on the trip, or where he was going to get the $400 to take up the land. He never told me anything about the money. In all these dealings I looked to my father for everything in taking up this land, and I followed his instructions throughout.

"Q. When you started to take up the land, just what did you expect to do with the land? Just tell us what you expected to do with the land?

"A. Well, I expected to sell it. Papa told me we could get $100 if we sold the land.

"Q. You expected from the start that—that is just what you expected it would be, $100, when you started out? A. Yes.

"Q. You were going to dispose of it as soon as you had proved up on the land?

A. I expected to." [589]

Cross-examination.

Mr. SHURTLEFF.—"Q. What makes you say that you expected to dispose of the land as soon as you proved up on it?

"A. Papa told us we would get the $100 when we sold the land.

(Testimony of Mrs. Mayme H. Thompson.)

"Q. Is that all he said about it?

"A. That is all I can remember.

"Q. Did he say anything to you about where you could get that $100? A. No.

"Q. Or whom from? A. No.

"Q. Did he tell you that he had made any arrangements to sell that land by which he could get $100 for it?

"A. Oh, yes, he told me that we would get $100.

"Q. That you could make $100? A. Yes.

"Q. Did you ever talk with anyone at any time prior to your sale of this land touching the disposition or disposal of it that you were to make after you did get it? A. No.

"Q. Your father, when you were ready to sell the land, came to you about the matter, did he, he spoke to you about selling it? A. Yes.

"Q. Did he tell you at that time how much you were going to make on the sale?

"A. Well, I think he did. [590]

"Q. You think he did. Did you make that sale because you were getting the $100 that he said was in it when you took up the land?

"A. Yes. What is that question?

"Q. The question was, Mrs. Thompson, whether you, when you made the sale, made it—I will put it a little plainer; strike that all out. I will put it to you direct: Did you make that sale and take this $100 because you had made any promise or agreement to sell it for $100 or because you were just get-

(Testimony of Mrs. Mayme H. Thompson.)

ting the $100 that your father said you could make if you took it up?

"A. To get the $100 that he said I could get.

"Q. I understood you to say that you had promised no one to sell it after you did take it up?

"A. No."

Redirect Examination.

Mr. PIER.—"Q. Mrs. Thompson, when your father said to you that there was $100 in it to take up the land, do you remember what you told him when he said that? A. I told him I would do it.

"Q. You told him you would do it? A. Yes.

Then follows chain of title from Mayme H. Baker to Charles E. Gregory and from Charles E. Gregory to the Curtis, Collins and Holbrook Company. [591]

Testimony of Mrs. Margaret J. Stover, for Complainant.

Mrs. MARGARET J. STOVER, called as a witness for complainant, testified as follows:

Before I was married I was Margaret J. Baker. At the present time I am living in Chico, Butte County, and have lived there for 6 years. I remember taking up some timber land in Plumas County.

"Q. I will tell you that the date on which you filed on the land was the 9th of June, 1902. At that time you were living at Prattville? A. Yes.

I was then living with my father and mother. My sister was also living there at that time. At that time her name was Mayme H. Baker. She is now

(Testimony of Mrs. Margaret J. Stover.)

Mrs. Thompson. Part of that summer we stopped at Mr. Head's hotel at Prattville. We lived all of that summer at Prattville. Part of the time we had a cottage. Mr. Heppe showed me the land first.

"Q. Did you have any conversation with anybody about taking up the land before you took it up?

"A. No one but my father; that is all.

"Q. All the conversation you had in connection with this land you had with your father? A. Yes.

"Q. Your father transacted all the business that you did? A. Yes.

"Q. Before you started out to take up the timber [592] land, did you have any conversation with your father? A. Yes.

"Q. What was that conversation?

"A. He said that if we would take up the land we would be $100 for it.

"Q. What did you tell him when he said that?

"A. I said I would.

"Q. That was the basis on which you started out to take up the land; is that correct? A. Yes.

I had no conversation with anyone else about taking up the land, but my father. My father paid the expenses in connection with the taking up of the land. I don't know where my father got the money with which he paid the expenses. I don't remember that he ever told me where he got it. I remember going to Susanville to make my final proof. I went to Susanville first to file on the land and it transpired we had not seen the land, I believe, and we had to

(Testimony of Mrs. Margaret J. Stover.)

go back and see it, and we then went on the trip and saw the land and we went back and filed on it. Then we made another trip again to Susanville to prove up on the land. On the trip I made to prove up on the land I paid the Land Office some money. I could not say exactly what was paid to the Land Office at that time. I think I paid something around $400 to the Land Office at that time. Father gave me that money. He handed it to me at the Land Office. I don't know where he got it. After I proved up on the land I came back to Prattville. [593]

"Q. What did you do with the land?

"A. I sold it—the land was sold.

I don't know to whom the land was sold. I executed the deed at Mr. Costar's office. I don't remember who told me about going to Mr. Costar's office to sign the deed.

"Q. Do you know whether anybody outside of your family would have told you to go over there to sign it? A. Possibly father told me."

I could not say for sure. I have an idea he was the one for he attended to everything else. I paid no money whatever in connection with the land except what he gave me. I paid nothing myself. All the money I paid out was just what my father handed me. He attended to it.

"Q. Had your father told you anything about having a conversation with Mr. Heppe or Mr. Brown? A. No, I knew nothing about it."

(Testimony of Mrs. Margaret J. Stover.)

Cross-examination.

My father attended to everything for me.

"Q. I suppose you are unable to recollect now how long after he had this conversation with you in which he stated there was $100 in it, that it was that you went to look at the land—you cannot remember that? Do you know how long after he told you that there was $100 in it, that you went to look at the land the first time?

"A. I do not think it could have been very long, but I do not know just exactly. [594]

"Q. Had you ever authorized your father prior to taking up this land, to enter into any promise or agreement for you that you would sell it or anything of that kind?

"A. I think I knew it was to be sold; he was to attend to it.

"Q. Before you took it up? A. Yes.

"Q. What was that conversation that you had about that?

"A. We were to go—I talked with him, and he said we were to get $100 if we would take up the land.

"Q. Of course you did not take up that land to keep it indefinitely, did you? A. No.

"Q. I wish, Mrs. Stover, that you would repeat as near as you can the conversation that you had with your father prior to going to look at the land, everything that you remember?

"A. Well, he told me that there was some land, some timber land to be taken up, and if we would

(Testimony of Mrs. Margaret J. Stover.)

take it up that we would get $100 for it; that is all that was said.

"Q. That was all that was said?

"A. That I can remember, that was said at the time.

"Q. And is it upon that conversation that you state that you knew it was going to be sold? A. Yes.

"Q. Had you made any promise yourself or authorized anybody to make a promise for you that you would sell that to any particular person?

"A. I did not talk to anyone about selling the land. [595]

"Q. Had you authorized your father—I might explain to you, Mrs. Stover, not that you expected to sell it for $100, or make $100, or that you could make $100, but did you authorize your father to make any agreement with any particular person at that time to sell it for $100 profit when you took it up?

"A. Well, I knew he was to sell it, but I didn't know who it was to go to.

"Q. Before you took it up? A. Yes.

"Q. Where did you get that impression from?

"A. Only what he told me.

"Q. What did he tell you that gave you that impression? A. He told me that.

"Q. There was $100 in it? A. Yes.

"Q. Did he tell you anything else?

"A. No, that is all I know he told me.

"Q. Suppose after you had made your application, you had had an opportunity to sell that land for $500, would you have felt at liberty to sell it?

(Testimony of Mrs. Margaret J. Stover.)

"A. Why, I think so—I don't know, I could not say whether I would.

"Q. I appreciate that, Mrs. Stover; I just want to get at what transpired, that is all?

"A. Why, yes, I think I could have sold it to someone else." [596]

Redirect Examination.

Mr. PIER.—"Q. Would you have gone and sold it for $500 without talking to your father first about it?

"A. Well, I could not say whether I would or not; I don't think I would, no.

"Q. As a matter of fact, do you think you would have done anything with the land without consulting your father first?

"A. No, I guess I would not, because he was doing everything, and I do not think that I would have sold it.

Mr. SHURTLEFF.—"Q. That was your only reason why you would consult your father, because you were advising with him about everything?

"A. Yes, he was attending to it.

Mr. PIER.—"Q. What were you to get $100 for; you were to take up the land; were you to keep the land and get $100 when you took it up?

"A. I was to sell it.

"Q. That is, you were to deed the land away?

"A. Yes.

"Q. He was to give the title to your land to somebody and get $100? A. Yes.

(Testimony of Mrs. Margaret J. Stover.)

Recross-examination.

Mr. SHURTLEFF.—"Q. Now, Mrs. Stover, just listen to that question again and the answer. (Addressing the Reporter.) Just read that question to Mrs. Stover and read her answer. [597]

(The last question and answer repeated by the Reporter.)

"A. Yes.

"Q. Is that your answer to that question, Mrs. Stover, that you knew you were to take that land up and deed it to somebody, somebody then in existence that you knew of, and get $100 for it?

"A. Yes, I knew I was to deed it to someone and get $100; that was it.

"Q. That arrangement had been made by your father? A. I think so.

"Q. Mrs. Stover, you remember giving your testimony in the Land Office, don't you?

"A. I remember of giving it.

"Q. Your memory was then fresher as to what occurred, was it not? A. I think so.

"Q. Now, Mrs. Stover—'Margaret J. Baker'—just see if that is your signature there; that is a photograph of it.

"A. Well, that must be mine; it looks something like my writing.

The MASTER.—"Let her see the statement.

Mr. SHURTLEFF.—"I was going to explain it to the witness. I am not asking you now, Mrs. Stover, for the purpose of trying to embarrass you or

(Testimony of Mrs. Margaret J. Stover.)

frighten you or anything of that kind; I want to get at the facts. If you made that agreement that settles it.

Mr. PIER.—May I suggest to counsel to explain to her that that is a photographic copy and that the black [598] would be white and that the white would be black, that is, the ink is photographed white, the ink comes out white and the paper comes out black, just the opposite of what it was in the first place.

Mr. SHURTLEFF.—"With the further explanation that black is black and white is white in this particular proceeding.

"A. I said no.

"Q. You said no? A. Yes.

The MASTER.—"You have not read that.

Mr. SHURTLEFF.—I was not going to read it into the record; I have respect for the lady, to be perfectly candid with you. Have you any explanation to make now of your testimony between the question and answer that you have just read and the one you have given here? A. No.

"Q. Your testimony now conflicts with this answer. A. I know it.

"Q. Which was correct? A. Now.

"Q. And this was the wrong answer? A. Yes.

Mr. SHURTLEFF.—"I guess that particular portion will have to be read into the record: 'Has any person offered to purchase this land after you acquire title? If so, who and for what amount? No.'

(Testimony of Mrs. Margaret J. Stover.)

Mr. PIER.—Do you remember being asked that question at that time, Mrs. Stover?

"A. No, I don't remember being asked the question. [599]

"Q. You don't remember being asked the question at all? A. No.

"Q. If you were asked that question and you made the answer indicated there, why the answer was incorrect at that time, is that it?

"A. Yes, if I made the answer there it was wrong.

The MASTER.—"Q. Who had offered to buy it?

"*Q.* I don't know what company; I don't know anything about it at all; I talked with no outsider at all.

The MASTER.—"It seems to be that counsel may have the wrong question there. That answer might very well have been correct, according to the witness' understanding of the question; apparently there is no definite person in her mind. She is now saying that she understood she was taking up the land for the purpose of selling it and to get $100 for it. Now, is there something else there?

Mr. SHURTLEFF.—"Just a moment, your Honor.

The MASTER.—"I do not want the witness to be placed in the position of impeaching her own testimony if it is not impeachable; it did not strike me from the reading it was necessarily so.

Mr. SHURTLEFF.—"Well, that is about the only question here. This further question was asked you, Mrs. Stover—

(Testimony of Mrs. Margaret J. Stover.)

The MASTER.—"Is this on final proof?

Mr. SHURTLEFF.—"On final proof.

"Q. This further question was asked you, Mrs. Stover: 'What do you expect to do with this land and the lumber on it when you get the title to it? [600]

"A. I expect to sell it some time; have no contract or agreement to sell it now.' Was that correct or incorrect at that time?

Mr. PIER.—Ask her if she remembers that.

Mr. SHURTLEFF.—"Q. Do you remember being asked that question and making that answer?

"A. No, I don't remember being asked that question.

"Q. If you did make that answer was that correct or incorrect?

"A. What was the answer I made there?

"Q. I will read it again to you: 'What do you expect to do with this land and the lumber on it when you get title to it?

"A. I expect to sell it some time; have no contract or agreement to sell it now.'

Mr. PIER.—"Q. Do you remember that question and answer?

Mr. SHURTLEFF.—"She answered that.

"A. I said I didn't remember of being asked the question.

"Q. What would you say about that answer now; is that correct or incorrect? I think to be perfectly fair to the lady, that her testimony is susceptible to

(Testimony of Mrs. Margaret J. Stover.)

an explanation, but at the same time the way it is left, it leaves the impression that she knew that she was to sell it. Have you any explanation to make about that, Mrs. Stover?

"A. I can give you no explanation. [601]

"Q. Do you think that the facts would be more clearly in your recollection at that time than they are now. A. Well, I don't know.

"Q. Here is another question, question 13: 'Do you know of any capitalist or company which is offering to purchase timber lands in the vicinity of this entry? If so who are they and how did you know of them?' A. I do not.

"Q. Is it not possible that the impressions that you have now about selling that land have grown up from talks that you had subsequently with your family?

"A. I did not know at that time where the land was going.

"Q. Have you any explanation to make about it, Mrs. Stover?

Mr. PIER.—I do not think that question calls for any explanation.

Mr. SHURTLEFF.—"If you are satisfied, Mrs. Stover is your witness. I say right now I have not the slightest wish in the world to place this lady in any other light than the correct light before this court; I have asked some questions that are somewhat embarrassing, perhaps, that I was compelled to, but in my own mind I am satisfied with the lady's attitude in the matter."

(Testimony of Mrs. Margaret J. Stover.)

Then follows chain of title from Margaret J. Baker to Charles E. Gregory and from Charles E. Gregory to the Curtis, Collins and Holbrook Company, and also a stipulation that Margaret J. Baker mentioned in the deed is Margaret J. Stover, the witness. [602]

Testimony of Thomas R. Baker, for Complainant.

THOMAS R. BAKER, called as a witness for complainant, testified as follows:

My name is Thomas R. Baker; age, 36 years, residence, Greenville, Plumas County. J. G. Baker is my father. I have a sister, Margaret J. Baker, now Margaret J. Stover, Mayme H. Baker, now Mayme H. Thompson. My mother's name is Ellen Baker. I filed on some timber land in Plumas County in 1902. I went out and looked at the land, accompanied by my father, Lee Pierce and Mr. Heppe. I went over to Susanville and filed on land, but I didn't file on the land that I looked at. When I got to Susanville, I found there were three Indian allotments, so I filed on land in another township, six miles away. I don't remember if it was in the same section of the next township. I know I jumped six miles.

The MASTER.—"Mr. Pier, I confess I do not understand the situation. I do not know as Mr. Shurtleff does."

I don't remember who gave me the description of the land unless it was my own people. I know that it was not Heppe. Heppe had nothing to with that at all. It must have been my own people. When

(Testimony of Thomas R. Baker.)

I went in to the Land Office with the description that was furnished for me to file on, I found that there were three Indian allotments of 40 acres each on that land, and so I took a piece of land in another township, six miles from there. [603]

"Q. Did you ever prove up on that piece of land?

"A. No.

"Mr. SHURTLEFF.—The second piece, you mean?

"Mr. PIER.—The first he never filed on, because of the Indian allotments.

"Mr. PIER.—Why didn't you file on that land?

"A. Well, there were only 12 trees on the 160 acres.

"Q. On the 160 only 12 trees; who informed you of that fact? A. Mr. Elam."

Arthur Elam went out and made a cruise on the land and told me I was not to prove up on it. My father and mother and sisters went over with me to the Land Office in Susanville and they acted as final proof witnesses for each other.

"Q. But you did not prove up on your land?

"A. No.

"Q. Did you receive any money on account of this attempt to file on the land in connection with these dealings at all? A. Yes.

"Q. How much did you receive?

"A. One hundred dollars.

"Q. When you started out how much did you expect to get? A. One hundred dollars.

"Q. What were you to do to get the $100?

(Testimony of Thomas R. Baker.)

"A. Well, I had to prove up on the land. I don't remember anything at all as to what I was to do with the land." [604]

I did not talk with anybody except my own people before I went out to file on the land.

"Q. That is your father? A. Yes.

"Q. And your conversation with him, what was that about taking up the land?

"A. Well, he told me if I wanted to take up some land I could make $100 out of it.

"Q. That was your father? A. Yes."

I do not think that I would have put $100 of my own money into timber land at that time to keep. I don't think that I would ever have gone and made the entry if it had not been for that talk with my father.

"Q. Do you know what this $100 was paid to you for? A. That was a mystery to me, too.

"Q. Did you do any work for that?

"A. Nothing, no work at all for it.

"Q. It was given to you in connection with this land transaction though?

"A. I suppose that is what it was."

Cross-examination.

"Q. Who paid you the $100? A. My father.

"Q. What is his name? A. James D. Baker."

I did not talk with anyone only my own people about taking up land. My father spoke to me about it. [605]

"Q. Did you receive this $100 before or after you went to look at the land? A. After."

(Testimony of Thomas R. Baker.)

I received it about 70 days after I filed. I did not prove up on the land at all.

"Q. What did Mr. Elam say to you when he discussed this land with you?

"A. He told me there were 12 trees on the land, and no need to prove up on it at all.

"Q. Is that all he said?

"A. That is all he said; right in front of the Prattville Hotel.

"Q. You have testified to an expectation to get $100 when you sold out?

"A. Well, I did not know what I was going to get.

"Q. From what source did you get your information upon that point, anyone other than your father? A. No, sir." [606]

Testimony of Charles J. Allen, for Complainant.

CHARLES J. ALLEN, called as a witness for complainant, testified as follows:

My name is Charles J. Allen. I live at Patterson, Stanislaus County, California. I am 40 years of age and my occupation is that of farmer. In 1902 I took up some timber land in Plumas County. At that time I was living at Seneca, Plumas County, California, and my occupation was that of mining, working the White Lily mine for wages for my father-in-law, who is R. K. Dunne. I was also working on a prospect of my own, which was bonded by George E. Tuman. He had bonded it to me for $5,000, i. e., he agreed to pay me that

(Testimony of Charles J. Allen.)

after I had run a 100 foot tunnel. He paid me so much down and at the end of the thing (I don't know how long it was now, three or four months, I don't remember the contract), he was to give me the rest of my money. When I took up the land, I think Art Elam showed it to me, I am not sure. When we went to look at the land Mr. and Mrs, Frank D. Spring and my wife accompanied me. I think Elam traveled in the same rig with us. Prior to my going to look at the land I talked with a number of people.

"Q. Just how did you come to go with Mr. Spring and Mr. Elam to take up the land?

"A. Well, Johnnie Heppe wrote me a note telling me that there was some land to be taken up; I don't know how it was, but I guess he told me Spring was going, too, and I don't know whether we—I don't know about getting the rig, how we went on that." [607]

I haven't the letter. It is destroyed. All I can remember about the letter is that Heppe said there was some land to be taken up. He did not tell in the letter what I could do with the land. I understood that from hearing all the others talking about it. I don't remember how Heppe came to send me the letter. I was talking to somebody there and I made the remark that I would take up some land if I could get a chance or something like that. That remark, I think, was made to Tom Baker. I think he was working for me at the time on that prospect. I don't remember as he told me particularly

(Testimony of Charles J. Allen.)

about taking up timber land, but I had heard lots of them saying that there was $100 in it, taking it up for some company. I don't know what company it was, only that Tuman was the agent for that company. I don't know whether I sent word to Heppe or whether I just told somebody that I would take up timber land. Heppe never told me how he came to write to me, I don't remember that Heppe said anything about expenses in the letter. When I took up the land I expected to turn it over to the company that Tuman and Heppe were agents for. I don't know what company it was. I found out later what the company was. I expected to get $100 clear, and did not expect to use my own money to prove up with. The party that went out to look at the land was made up in Prattville. I don't remember how I made the trip from Seneca to Prattville. The land that we looked at was northwest of Prattville, out towards Stover ranch. It was quite a distance [608] beyond the Stover Ranch. After looking at the land I think we went across to Brown's and stayed there all night, and went on to Susanville the next day. When we go to Susanville we filed on the land. While there, we stayed at the Emerson Hotel. After filing on the land we returned to Seneca by way of Prattville. In returning from Seneca to Prattville we traveled in the same rig that we went over in. I don't know how I got back to Seneca from Prattville. I don't think we paid any of our expenses on this first trip. When it came time to prove up on the land we went

(Testimony of Charles J. Allen.)

to Susanville to prove up on the land. My wife and myself went with Mr. Spring and his wife. I don't think Elam was along on that trip. We met the Springs in Seneca. I don't know how we came from Seneca to Prattville. We went from Prattville to Susanville in a private conveyance. The rig belonged to Head or Bunnel, some of them fellows around Prattville. It was a livery rig. I made final proof upon the land and my wife did also, and we paid the Land Office money at that time. Jack Heppe gave me a check at Prattville, with which I paid the Land Office. The check was for $1,600 anyway. Heppe instructed me to give $800 or something like that to two men who would be there. Their names were Massey and Burchill; I am not sure about the last name. They were strangers to me; I had never seen them before or since. Heppe handed me that check in Prattville, just as I was getting into the rig. I think it was Holbrook's check. I think that it was [609] signed by Tuman, but it was on Holbrook. I cashed it at the bank. I did not see Mr. Holbrook. I am sure it was signed by Tuman. It was a check on the bank. When we got to Susanville we first went to the hotel. Then I went to the bank, drew this money and gave part of it to those two fellows. I did not have to inquire for them. They inquired for me. This money was used to pay the Land Office. When Mr. Elam took us out to show us the land, he did not charge us anything for showing us the land. There

(Testimony of Charles J. Allen.)

was nothing said about paying him anything for showing us the land.

"Q. Do you remember having any discussion with anybody about getting the money to take up the land, talking with anybody at all about taking up the land?

A. I talked with lots of the neighbors around, and the like of that."

"Of the $800 I retained, after giving Massey and Burchill part of the money from the check that Heppe gave me and I cashed, I paid part on my own land, and the other $400 I gave to my wife, which I suppose she used to pay for the land that she filed on. I did not give Heppe any note for this money at all. I did not consider that I was going to pay that money back to him in cash. I don't know as I figured on returning it."

"Q. Did you figure that you were under any obligation for this $800 that he had given you?

"A. Well, I guess I did.

"Q. Well, now, how were you going to discharge that obligation?

"A. By taking this land up and turning it over to him.

After proving up on the land we stayed in Susanville only one night and returned home the next day, and went out to Seneca and stayed there. [610]

I turned the land over to a man by the name of Gregory. I did no business with Gregory himself; I just signed the deed to him. I handed the deed

(Testimony of Charles J. Allen.)

over to Tuman or Heppe, one or the other. They were together. They came to my house at Seneca. At that time I was given $100. At the same time my wife turned over her deed and received $100, the same as I did.

"Q. Do you know whether or not any expenses were added to that at that time? Did they pay the expenses to you at that time?

"A. I think they stood the expense.

"Q. That is you were not out anything from your own pocket during the whole transaction?

"A. No.

I think there was something said in Heppe's letter about my wife's taking up land. I don't remember any conversation with anybody about being furnished expense money on these trips. I talked about it a great deal with different people. I did no business with anybody and I did not promise to sell the land. My wife and I talked over this timber matter when we started out. She expected to turn the land over to the company, the same as I did. On this first trip to Prattville when I went to look at the land, I talked with Heppe, but I don't remember his mentioning anything about the letter. He just said that Art Elam would show us where the land was. The particular piece of land I looked at did not look anything extra to me. I don't know that I was interested in determining whether it was good timber land or not at the [611] time. I don't remember how long we stayed at the land; not very long.

(Testimony of Charles J. Allen.)

"Q. Do you remember going on your wife's land also at the time?

"A. Well, we just went around there on some land, I don't know whose it was."

I think Art Elam gave us the written description of the land that would be necessary to put in the application.

Cross-examination.

Mr. SHURTLEFF.—"Q. Mr. Allen, what did you say caused you to take up this timber land in the first place?

"A. I suppose to get the benefit of that $100."

I got that information from talking to the neighbors, that I could get that much for my timber right if I exercised it.

"Q. Had you ever discussed it with Mr. Heppe as to whether you could get it?

"A. No, I had talked about it to somebody, or made the remark that I would like to take up some land; then he wrote me a note or letter, I think it was a letter he wrote me, and he told me that there was some land that I could take up."

I cannot remember anything in particular that he wrote. I think that all that was in it was that Art Elam or somebody would show us the land. That is all the conversation I remember with Heppe. I might have had a talk with him at Prattville prior to making my application, but I don't remember such a conversation. This information that Heppe and Tuman were agents [612] for the company I heard from these people—Tom Baker for one. I

(Testimony of Charles J. Allen.)

don't know that he said whether they were agents or not, but they were doing business for some company. I recollect that.

"Q. Isn't it possible that they said they were taking up land and expected to sell it to a company?

"A. Well, I don't know, maybe it was that way."

I had had no talk with Mr. Tuman touching the taking up of land before, and I made no promise to Tuman or anyone that I would sell the land to them for $100 when I had taken it up. My expectation was based upon general rumor that I could sell it (if I took it up) for $100. I was under no contract to dispose of it to any company, but I felt as though I were. That feeling was caused by their furnishing me the money. I knew they were furnishing the money for all the people. When I started out to take up the land I felt under obligation to turn the land over to whoever Tuman or Heppe represented.

"Q. You had heard by general rumor that they were taken up land? A. Yes.

"Q. You had heard by general rumor that if you took up land that it could be sold for $100?

"A. Yes.

"Q. And that general rumor was to some company, you say? A. Yes.

"Q. You didn't know what that company was?

"A. No.

"Q. Or who it was? A. No.

"Q. Or who it was composed of? A. No.

"Q. Never did hear the name?

"A. I don't know as I had. Afterwards I heard

(Testimony of Charles J. Allen.)

it lots of times, since then.

After getting the letter I talked a little bit with Heppe in Prattville. I don't remember just what he said. He told me that they would not make any agreements, no bargain. He supposed I understood it, or something like that. That was before I went out to look at the land. I told him, yes, I guess I did, or something like that.

"Q. What impression did you get from that?

"A. That they would give me $100.

"Q. Who?

"A. The company."

He did not say he represented the company, but I knew he did not have any money. I didn't know that he [613] represented the company, but I knew he was getting the money some place.

"Q. He might have represented Mr. Tuman, personally, so far as you know?

"A. As far as I know; only just rumor. I remember when I made my final proof of going to Susanville and giving testimony there.

"Q. Do you remember having been asked this question: 'Do you know of any capitalist or company which is offering to purchase timber land in the vicinity of this entry? If so, who are they, and how did you know of them? No, sir.' Do you remember giving that answer? A. Yes.

"Q. That was not true at that time, was it?

"A. I don't know if it was or not; I guess not.

"Q. As a matter of fact, it was not true, was it?

"A. Well, I had heard it from rumor, all I had

(Testimony of Charles J. Allen.)

heard of it; I didn't know anything definitely.

"Q. 'Has any person offered to purchase this land after you acquire title? If so, who, and for what amount.' To which you answered, 'No, sir.' Had anyone offered to purchase it at that time?

"A. No.

"Q. Had you made any promise at that time to sell it? A. No.

"Q. At that time had you given anyone to understand that they would get it? A. No.

"Q. You were asked this question: 'Where did you get the money with which to pay for this land, and how long have you had same in your actual possession,' to which the answer is made: 'Made from mining; I have accumulated this [614] summer.' Do you remember making that answer? A. Yes.

"That was not true, was it?

"A. No, I guess not.

"Can you recollect now what moved you to make that answer to that question?

"A. No, I don't.

"Q. Another question: 'Did you pay out of your own individual fund all the expenses in connection with making this filing, and do you expect to pay for the land with your own money?' to which you responded, 'Yes, sir.' Did you make that answer?

"A. I guess I did. I put all the answers down that I thought I had to do to get the land.

"Q. That is what I want to get at, were you willing when you went there to that Land Office and were sworn to make any answers that you might

(Testimony of Charles J. Allen.)

make, irrespective of whether it was true or untrue, in order to get the land?

"A. No, I don't know as I was. I didn't know what I was getting into when I first started into it, and after I got started I went through with it."

Mr. SHURTLEFF.—"Q. Now, Mr. Allen, does that look like a photograph of your signature there? Of course you will appreciate that black is white and white is black here? A. I guess it is.

"Q. Can you say positively whether it is or not?

"A. I think it is.

"Q. That sworn statement was subscribed to on the 18th day of July, 1902, before Roseberry; in it you state [615] that 'I have made no other application under said act; that I do not apply to purchase the land above described on speculation, but in good faith to appropriate it to my own exclusive use and benefit, and that I have not, directly or indirectly, made any agreement or contract, at all, or in any way or manner, with any person or persons, whomsoever, by which the title I may acquire from the Government of the United States may inure in whole or in part to the benefit of any person except myself, and that my postoffice address,' etc., you remember signing that, Mr. Allen?

"A. Yes, I think I do.

"Q. Was that true at that time, that you were making the application in good faith, and that you had not directly or indirectly made any agreement or contract, or in any way or manner with any person or persons whomsoever, by which the title you might

(Testimony of Charles J. Allen.)

acquire to this property from the Government of the United States would inure in whole or in part to the benefit of another?

"A. I don't know. I had not made any contract, or anything like that with anybody.

"Q. Did anything occur between you and Mr. Heppe which would lead—

"A. (Intg.) Only what I told you a while ago.

"Q. You told him—what did you mean then when you said to him, 'All right,' when he said they were making no agreement and he guessed you understood—what did you mean by that 'all right'?

"A. I meant that I would go ahead with the land.

[616]

"Q. And then what?

"A. Well, turn it over to whoever wanted it.

"Q. To whoever wanted it. Did you expect to turn it over to Mr. Heppe or somebody? Suppose I had come along after you had proved up and wanted the land, would you have felt at liberty to have sold it to me? A. No.

"Q. Why not?

"A. Well, I suppose that I would turn it over to Heppe.

"Q. Wouldn't it be upon the fact of that conversation with Mr. Heppe?

"A. I don't know about that.

"Q. You say you would not feel at liberty; why not; you must have had a reason?

"A. I don't know hardly how to answer that.

"Q. If you had met Mr. Heppe on the road or any-

(Testimony of Charles J. Allen.)

where else and Mr. Heppe had told you to take up this timber land, but we cannot make an agreement with you, but I guess you understand, would you after having such a talk as that make a sworn statement that you had not directly or indirectly agreed to pass the title to another after you got it?

"A. I guess I did all right.

"Q. So that now your conclusion is that this statement that you made on the 18th day of July, 1902, was false? A. Yes.

"Q. And that the affidavit that you took there was a false affidavit? A. Yes.

"Q. That you swore to something then that was not [617] true, is that the position that you take about it now? A. Yes.

"Q. At that time that you made that affidavit did you discover that you had done something wrong, that you had to go on after you had commenced it?

"A. Yes.

"Q. What had you done prior to that time that would compel or cause you to make an affidavit which you now say contains statements that were false?

"A. I don't know as I understand that?

"Q. You said a moment ago that you got into this thing not knowing what you were getting into?

"A. I didn't think they would ask all those questions.

"Q. This is the very first thing that you filed, the very first paper that you filed; you were under no obligation then to file it?

(Testimony of Charles J. Allen.)

"A. I know, but I had went clear to Susanville and started it.

"Q. But the very first paper you filed contained what you say now was a false statement. What caused you to make that false statement?

"A. To get the land, I guess; I don't know what else.

I remember the name of Gregory. I saw the name when Heppe and Tuman came down to my house. I discussed my case with the special agent at my home in Oakland three or four years ago and have discussed it with the District Attorney since coming down here. [618]

Chain of title from Charles J. Allen to Gregory and from Gregory to the Curtis, Collins and Holbrook Company, and record of recordation thereof. [619]

Testimony of Carrie M. Allen, for Complainant.

CARRIE M. ALLEN, called as a witness for complainant, testified as follows:

My name is Carrie M. Allen. I am the wife of Charlie J. Allen, the witness who just left the stand. I remember taking up some land in 1902. At the same time my husband took up his timber land. At that time we were living in Seneca. When we went out to look at the land my husband and I went with Mr. and Mrs. Spring. On one trip there was a man by the name of McMauns went with us, but I am not sure which one. I don't remember whether Arthur Elam was along on the trip when we went out to look

(Testimony of Carrie M. Allen.)

at the land or not. When I started out from Seneca to Prattville and from Prattville started out to look at the land, I expected to sell the land I took up for $100. My husband and I had discussed the taking up of this land before we started. We didn't expect to use our own money to take up the land with.

"Q. Did you know where the money was coming from to take up the land?

"A. Well, I suppose we did.

"Q. Where did you expect the money to come from to take up the land?

"A. Well, through this company I suppose we were supposed to sell it to."

At that time I didn't know who the individuals were through whom we were to get the money. When I got to Susanville I filed on the land. [620] While there we stayed at the Emerson Hotel. I know nothing about how the expenses were paid on that trip. After filing on the land we returned to Seneca. We made our final proof in Susanville. In making the trip to Susanville we went through Prattville, but I don't know how we went from Seneca to Prattville. When we got to Susanville we made our final proof at the Land Office. I paid the Land Office over $400. My husband gave me the money. he got the money through a check. I would not swear where he got the check, but I think it was from Mr. Heppe. I only know what my husband told me; he had a check; I saw the check. I didn't see the check handed to him. He told me Mr. Heppe gave it to him. After we proved up on the land we returned

(Testimony of Carrie M. Allen.)

to Seneca. I sold the land and got $100 for it. The land was deeded to Charles E. Gregory; I think that is the name. I did no business, personally, with Gregory. When I signed the deed I think there were present, Mr. Ross and I suppose my husband, and Mr. and Mrs. Spring. I don't remember anybody else being present. At that time Mr. Ross lived in Seneca. He drew up the papers and took the acknowledgment of the deeds. I got the $100 for my land. I don't remember whether the money was handed to me personally, or not. I don't remember who the person was that paid the $100. I don't remember about delivering the deed. Besides my husband I talked to Tom Baker about taking up this land. He was just telling about others taking [621] up land and he asked us if we were going to take any up and I told him we might. He said there would be $100 in it. I don't remember his saying anything about expenses. I don't know where my husband and I got the idea that we would not have to use our own money. My husband did not tell me about any conversation he had with Heppe and any letter he received from him. The whole conversation that I remember in relation to the land was one with Mr. Baker.

Cross-examination.

This conversation with Mr. Baker took place at my own house. My husband and I were the only ones present. Mr. Baker did not ask us to take up any land then. I don't know how long it was after this conversation that we took up the land, but the

(Testimony of Carrie M. Allen.)

conversation took place before we took up the land. All the other information I have related about the taking up of the land came through my husband. I don't know as my husband discussed with me, prior to the taking up of the land, as to whom we should dispose of it. I did practically as my husband suggested. He took charge of the whole matter. I know George E. Tuman and knew him at the time. I did not discuss it with him. I didn't know the Holbrooks, the Collinses or the Curtises. [622]

Redirect Examination.

Mr. Baker did not mention the fact that he had taken up some land himself.

(Then follows chain of title from Carrie M. Allen to Charles E. Gregory and from Charles E. Gregory to the Curtis, Collins and Holbrook Company, with dates.) [623]

Testimony of John W. Aid, for Complainant.

JOHN W. AID, called as a witness for complainant, testified as follows:

My name is John W. Aid; age, 52 years; residence at the present time is Manteca, San Joaquin County, Cal. I think I lived in Chico in 1902 and my occupation at that time was teamster and common laborer. I am the same thing yet. Teaming is my business generally. I remember filing on some timber land in 1902 or about the year 1902 and if the record shows it was on the 5th of September, 1902, that was the date I made my filing. When I went to file on the land I think that my father, my

(Testimony of John W. Aid.)

two brothers and Mr. Rhodes and myself constituted the party. We made our filings at Susanville. Before we went to Susanville to file we went out and looked at the land on the mountains above Susanville and passing through Taylorville, where we met Mr. Remick on our way.

"Q. That is Mr. J. E. Remick, commonly called Ned Remick? A. Yes.

"Q. Did he go with you to look at the land?

"A. Yes."

I did not know where the land was located, that is what we were paying for; he was to show us where the land was, that is, he agreed to locate for anyone that would pay the price of location. Before we went to Taylorville I did not have any conversation with anybody particularly about taking up timber land, talked in a way, through others, neighbors and people that I met.

"Q. Did you have any talk about that with George [624] Tuman?

"A. No, not at that time.

"Q. Before you went to look at the land?

"A. No.

"Q. Before you went to look at the land at all?

"A. Yes, I believe, it seems to me before I went to look at the land I met Mr. Tuman before that.

When we started out to look at the land as I said before, our party consisted of five people, my father, two brothers, Mr. Rhodes and myself, and I got money from Mr. Tuman to carry me through.

(Testimony of John W. Aid.)

"Q. So then you must have had some conversation with Mr. Tuman?

"A. Yes, before we went to see the land."

Mr. Tuman was pointed out to me and when I approached him as near as I can remember, I said I understood that he himself, or representing someone at least, was loaning money to those that wished to take up land and I told him that I would like to avail myself of the opportunity but I did not have money to do it with. That is all that I spoke to him about. He did not say he could furnish any money.

The MASTER.—"Q. What did he say?

"A. He said that he would loan money for those that wanted to take up land.

Mr. PIER.—"Q. Mr. Aid, just tell us that conversation, as near as you can remember it.

"A. There was not a great deal said about it. Most of my conversation was with Mr. Eastman and Mr. Hensley. They told me most about it. [625]

When Mr. Tuman told me he could loan me money to take up land I think I mentioned something to him about that if I could arrange so as to get money to take up land I thought that my father would like to use his right and I had two brothers that would like to use their rights. They were like myself, they would have to borrow money to prove up on the land.

Mr. Rhodes was with us, he was traveling with me. We had been haying on the ranch and he was

(Testimony of John W. Aid.)

with me and he filled in with the party in that way.

"Q. You said that Mr. Tuman gave you the money to pay for the expenses?

"A. No, he did not give me the money.

"Q. He furnished you the money?

"A. Not then. I made the trip down to see my father and brothers about it and to tell that possibly we could make arrangements so as to borrow money so as to prove up on the land. I went on my own money; I had my own money; I had my own team and I drove my own team and I made the trip on down to Chico and told them about it and came back."

At the time that I talked with Tuman the first place was in the vicinity of Prattville and when I came back to Prattville after I had made the trip down to Chico and seen my father and brothers I told Tuman if we could borrow the money from someone we would like to locate the land and he proposed to loan us the money, as near as I can remember or someone would. I think he promised to loan us the money to prove up on the land.

"Q. Now, what course did you decide to pursue at that time?

"A. Well, we concluded we would locate the land." [626]

I went down and brought my father and brothers and Mr. Moore up with my own team from Chico but I do not remember whether we saw Tuman when I got back there at Prattville or not, but I

(Testimony of John W. Aid.)

told them we could borrow the money to prove up on the land.

The MASTER.—"Q. What counsel is trying to get at is, when it was that Mr. Tuman furnished you the money for your expenses; was it before you started out for the land from Chico or was it afterwards?

"A. It was made after I made that trip. I did not borrow the money until it came time to file on the land.

"Q. You mean by 'when it came time to file on the land' the time to file your application for the land? A. Yes.

"Q. How much expense money did he give you?

"A. That I forget.

"Q. Didn't you have some understanding with him as to what you were to get for taking these people and showing them the land?

"A. Well, later on that was, when there was others that wanted to go and take up land, they had no way of going, and so I arranged that I would charge them $4.00 a day for the use of myself and team to haul them up to the mountains, and it was to come out of their expense money that they borrowed. I did not get anything for my team other than the $4.00 a day that was paid for my time and the team's time. I did not get any pay for my team when I took my father and brothers out and showed them the land, but later on, as near as I remember, for hauling them up there they [627] paid me $20 I believe, I am not sure of that.

(Testimony of John W. Aid.)

"Q. They paid you $20 later on for taking your father and your brothers out there and showing them the land?

"A. That was their expense though, that they must pay out of the money they borrowed—it was really their expense.

"Q. Did you ever pay Mr. Remick anything for locating you on the land?

"A. Well, he was to get his $25 when we proved up or the location, when we had proved up on the land.

"Q. Who did you have that arrangement with?

"A. I know there was something said about when he was to have his $25 for locating, and he says, "when you prove up on the claim"; he says, 'you might die before it is proved up.' Anyway it was settled at that time we went to pay him at that time.

"Q. Did you ever pay him the $25?

"A. We paid him the $25 when we sold the land.

"Q. I say did you ever pay him the $25 for locating you on the land?

"A. I arranged when I sold the land for that to be paid him.

"Q. Who was to pay him for that?

"A. Mr. Tuman when he made the deal, in selling the land. He was then to pay that. That was a part of the arrangement, when it was sold.

Mr. Remick did not say he would expect pay from Mr. Tuman, there were no arrangements of that kind, in fact, Mr. Remick never mentioned Mr.

(Testimony of John W. Aid.)

Tuman's name. I went to Mr. Remick to be located on the land because parties had told me [628] that he was locating people. Mr. Eastman and Mr. Hensley and quite a few others said that Mr. Remick would locate people and there were several locators around the country. I do not remember that anybody introduced me to Mr. Tuman. He was pointed out to me and I am under the impression I approached him myself. I do not know whether Mr. Eastman or Mr. Hensley pointed Tuman out to me but I think it was through them that I heard that Tuman had money to loan people to take up land.

"Q. When you proved up on the land, Mr. Aid, did you use your own money to pay for the land?

"A. I did not.

"Q. Where did you get the money to pay for the land? A. I borrowed it from Mr. Tuman."

I do not remember if he handed me the money personally but I presume he did. He must have given it to me at Susanville at the land office at the time I made proof as I did not have it before.

"Q. You did not have it before you got to Susanville? A. No."

I do not remember whether the money was handed to me in the Land Office or in the hotel. It is a question in my mind whether Tuman gave me the money personally or whether it was handed me by someone else, but it was through Mr. Tuman that I got the money. I do not think I had any conversation about the money after I located on the

(Testimony of John W. Aid.)

land before I made final proof. After we proved up on the land I [629] took my father and two brothers and Mr. Rhodes back to Chico.

"Q. And it appears that you made your final proof, Mr. Aid, on the 21st of November, 1902, and your deed to Mr. Gregory was executed on the 9th of December, 1902; that was about three weeks afterwards. I will ask you who you delivered this deed to—do you remember executing the deed—is that your signature?

"A. Yes, that is my signature."

I remember signing the deed, I think it was at Chico. It might have been in Mr. Stilson's office there, a notary public. I suppose I signed it there, it is years ago and I cannot remember just as to that. I do not remember whether or not the deed was already prepared when I went into the notary's office but it seems to me that Mr. Stilson read it and I think I delivered it to Mr. Tuman.

"Q. He did not pay you anything at the time you signed the paper?

"A. No, not in Mr. Stilson's office at all.

"Q. Did you ever get anything for signing this deed?

"A. I presume I must have. I deeded to somebody else.

"Q. Now, when did you get your pay for the timber land? A. When did I?

"Q. Yes.

"A. Well, I have not got the date.

"Q. Where did you get it?

(Testimony of John W. Aid.)

"A. Where did I get it?

"Q. Yes. [630]

"A. At the time we sold the land we was in Chico.

"Q. Whereabouts in Chico did he pay you the money?

"A. It was at the Park Hotel; that is where we met him.

"Q. Yes, whereabouts in the hotel?

"A. It was right to one corner of the sitting-room not more than six or eight feet from the cloak-room, right along about the cloak-room door.

"Q. Was it in the sitting-room or was it in the cloak-room?

"A. Well, it was just about standing right in front of the cloak-room door, just about in the door."

I do not remember that there was anybody in the sitting-room at the time. Generally there are a good many sitting there. I do not know how it happened that we went to the sitting-room to get our pay. We simply met there to sell the land to Mr. Tuman.

"Q. (Mr. PIER.) How did you know that Mr. Tuman was there?

"A. Well, he was to be there to buy the land, after he had notified us he would be there to buy our land."

I do not remember just when he told us that he would be there to buy the land and I do not remember whether or not he was up in Stilson's office at

(Testimony of John W. Aid.)

the time I signed the deed.

"Q. Do you remember where you handed Mr. Tuman the deed?

"A. Well, it was at the Park Hotel when we conveyed the land to him." [631]

When I handed him the deed he handed me the money. When we sold to him there the proposition was he was to pay all the expenses so that when the thing was all paid it would leave us clear with $100.

"Q. How much money did he pay you altogether?

"A. Altogether, in taking up the land and proving up on it.

"Q. At that time in Chico when you were in the cloak-room and handed him the deed, how much money did he pay you?

"A. It was $100; it was understood he was to pay for all the expenses that it was necessary he should pay to us.

"Q. But he didn't pay it to you then?

"A. He gave us $100.

"Q. And later he paid you some more, did he?

"A. No, he didn't pay me later. He was to pay the locating and pay the bills in place of us doing it.

"Q. You mean you were to pay the locating and the hotel bills and other expenses?

"A. He was to pay for the location.

"Q. How about your $4.00 a day and so on for your time in taking entrymen up there?

"A. Well, when he agreed to loan us some money he advanced us some money for that.

(Testimony of John W. Aid.)

"Q. But that was not settled up at the same time?

"A. No.

Mr. PIER.—"Q. When did you have the settlement in this matter, in the whole matter? [632]

"A. Well, we called it a settlement when we sold the land and delivered the deed.

"Q. Had you already been paid then for the use of your team in hauling these various parties up to look at the land?

"A. Well, as I say, he advanced me some money to carry us through, because we told him we did not have money to go on unless we borrowed the money to carry it all through; it was part of the money that we borrowed.

"Q. Now, subsequent to conveying this land to Mr. Tuman—you also remember a trip in which you took out other people to look at the land, do you, Mr. Aid? A. Yes, I made about two trips."

The last trip I made, I think I took the two Taylors, Mr. Gray, Mr. Moore and Mr. Butler, I think his name was Butler. I am not sure whether my father went along that time or not. He had been having malaria pretty bad at Chico and I persuaded him to go up into the mountains for his health and possibly he went along.

"Q. How did you come to take these various parties up to look at the land?

"A. Well, because they had no way to go. I was hired to go, they hired me to take them along and they had the same arrangement made that the rest of us had, they would borrow the money."

(Testimony of John W. Aid.)

I told them just what arrangements we had been able to make in borrowing the money and it was possible they could do the same thing, because Mr. Tuman was offering to buy all the land that he could get, as I understood it. When it was learned that I had located there quite a few came to me from all over. Probably fifty or more would have [633] gone.

"Q. Now, Mr. Tuman was paying you for them just as you would haul them out, paying you for every trip that you hauled them out—he would pay you for every trip, would be not?

"A. No, he would not pay me every trip."

He was to pay me $4.00 a day for the use of my team and myself to drive it up there, with the money that he was to loan them—that was to come out of the money that they borrowed from him. That is the way I understood it. They had the money advanced to them to carry them through, the same as myself and my brothers.

"Q. Who advanced the money to them?

"A. They got their money from Mr. Tuman.

"Q. Now, as a matter of fact, didn't you handle the money?

"A. He sent the money to me as he could not be there, and he requested me to hand this money to these parties, which I did.

"Q. None of these parties knew Mr. Tuman at that time, did they?

"A. No, not until I introduced them."

All they knew about Mr. Tuman they had learned

(Testimony of John W. Aid.)

through me that I had arranged that if they wanted to take up land they could borrow the money. He would lend the money to those that wanted to take up land. I said, "You can see Mr. Tuman and you can make your arrangements to borrow the money to carry you through." I do not know where Mr. Tuman was at the time that I made the trip with the Taylors and Mr. Gray to look at the land. He came to Chico but I do not know whether it was before that time or not. [634]

"Q. Well, now, what were your general instructions from Mr. Tuman as to taking these various people out to look at various lands and about his being willing to advance the money for them?

"A. Well, he was willing to loan money to those that wanted to take up land?

I said that there were some fifty people that came to me and wanted to take up land but I do not know as that was the exact number, but a good many came that didn't take up land. I did not take them all out to look at the land for the reason that the Government had placed a reserve on that land and nobody could take up any more land. I do not know whether the Taylor Brothers and Mr. Moore got in on the last piece of land that could be taken up or not, but I remember about that time the Government placed a reserve on the land. There were lots of people that wanted to take up land but could not do it on account of the reserve. I took the first party in there consisting of my father and brothers and others about the 5th of September, 1902, and I made the trip with

(Testimony of John W. Aid.)

the Taylors and Gray about ten days later and that was the last time we went over there as near as I can remember. There were only two parties that went.

Mr. PIER.—"Q. At the close of yesterday's testimony Mr. Aid, you stated that there were a great many people that came to you to find out about locating on land, taking up timber land, and that you took one group of your [635] two brothers and your father and yourself and Mr. Rhodes out to look at the land, and then you took another group ten days later of Mr. Moore, and the Taylor Brothers and Butler and Mr. Gray, to look at the land, and then you were asked if you located any others and you stated you did not. Why didn't you take any others out to look at the land?

"A. Well, I said because they had placed a reserve on the land so that we could not locate any more.

"Q. You showed people land so that they filed on the land on the 15th of December?

"A. I think you are mistaken about that.

"Q. The Government records show it was the 15th of December?

"A. I did not show anybody any land.

"Q. I mean you took them out to show them the land, didn't you? A. No, I didn't.

"Q. Well, you took them out where they could see the land?

"A. I hauled them over there, but I had nothing to do with locating.

"Q. And Mr. Remick pointed out the individual

(Testimony of John W. Aid.)

pieces of land that they were to look at?

"A. Yes, I was just simply a teamster, hauling them over there.

"Q. The Government records show that locations were made in October, November and December of that year; now it could not have been because the Government had placed a reserve on there that you stopped hauling people over there. [636] Now what was the real reason that you did not haul people over there, other people over to look at the land?

"A. That certainly was the reason, because they could not take up any more land.

"Q. Who could not take up any more land?

"A. No one; no one could.

"Q. Well, the Government records show other people did take up land, took up land till April, 1903? A. Whereabouts?

"Q. Over in that vicinity.

The MASTER.—"Q. Can you think of any other reason why you would not haul people in there besides that you have given?

"A. That is the only reason that I know of.

Mr. PIER.—"Q. Now, how did it happen—

"A. (Intg.) It does seem to me that there was some decision to be rendered on that, it took time for the people to know whether they could locate or not.

"Q. They were locating right along all the time?

"A. I don't know anything about it then. I was not there. I had nothing to do with that.

"Q. Now, how did you happen to go to Mr. Taylor and ask him about if he would like to take up some timber land?

(Testimony of John W. Aid.)

"A. Well, I just simply mentioned these facts to people, to acquaintances and friends."

I spoke to Mr. Taylor that he might avail himself of the opportunity to do as I had done if he wished to as [637] a friend. I knew Mr. Gray at the time, but I do not know that I was on as friendly terms with him as I was with Elijah Taylor at that time. I was not very well acquainted with Mr. Butler, but as I have stated, there were people that I was not so well acquainted with and some that I had not met before, they heard of this and they would come to me and ask me of these opportunities, that they had heard that they could locate land, that there were locators, and they had heard I had located my land. I had known Charlie Moore for a great many years previous to that time. I do not know how long I had known Robert Taylor. I had known him around Chico quite a number of years.

"Q. Now, how long were you in making up this party of five people?

"A. Not any more than three or four days, I guess, or a week, something like that.

I do not know how long it was after I spoke to Elijah Taylor that we first started out to look at the land. I do not remember whether or not I had arranged with Mr. Butler and Mr. Moore to go in the party before I spoke to Elijah Taylor. I am under the impression from the conversation that I had with Elijah Taylor that he had never met Tuman and did not know anything about him except what I had told him. I talked with Robt. G. Taylor and John L.

(Testimony of John W. Aid.)

Gray about taking up land, in fact, I talked with all of them. I think probably Mr. Butler was present through other friends and later on he was probably introduced to me and I told him I thought it would be all right for him [638] to take up land, that he would have to see for himself, that I could not arrange for that until he went to see for himself. I do not think the money to pay all of these expenses came through me. There was some money advanced.

"Q. Didn't you tell these people that arrangements could be made to borrow money on this land?

"A. Yes, I told them just as I understood it, and they I suppose understood it as near as they could from what I told them.

"Q. Now, what arrangements did you make with them about taking up the land, with each of these various parties, about being hauled out to look at the land?

"A. Well I simply stated to them just as it was stated to me by Mr. Tuman; it was people you know that were friends or acquaintances of mine, people who were honorable people, people of repute, and he stated that he would loan the money to prove up on the land to myself and others. He told me that he would lend them money, whether it was our crowd or more, there was no definite number of settlers he was willing to lend money to anybody to take up land that I recommended to him as being reliable. He certainly to some extent relied upon me and my judgment whether they were honorable people to lend money to.

(Testimony of John W. Aid.)

"Q. For instance he loaned money to take up Elijah Taylor's land without ever seeing Elijah Taylor, didn't he?

"A. Yes, I suppose he did, and in fact others pretty much the same way. [639]

"Q. He loaned money to take up land to R. C. Taylor, without ever seeing R. C. Taylor, didn't he?

"A. I presume so.

"Q. Don't you know that he did?

"A. Well, as I have said, he relied upon my judgment as to their being honorable people to deal with.

"Q. He loaned money to John L. Gray to take up land without ever seeing him, didn't he?

"A. I believe he did. In fact, he did for the bunch that went up there.

"Q. Now, what was the proposition that you made to these various people when you asked them if they wished to take up the land?

"A. I made them no proposition.

I simply stated the case as it was stated to me, what Mr. Tuman would do. First I would find out whether or not they had exhausted their timber right.

"Q. And then you would inquire if they would like to make a piece of money by taking up a piece of timber land.

"A. Never used those words at all.

The way I opened the conversation with these various people would be in a general way with all of them. No special way to any certain one but it was in a general way; that there was an opportunity that

(Testimony of John W. Aid.)

we could use our timber and stone right, that there was a way we could borrow the money to prove up on the land and if we wanted to sell our land they would buy it, that is to say, they were buying all they could get, I presume, at least that was my impression. I told them it was stated to me that the price they had [640] been paying for the land was not less than $100 and they possibly might pay more, but it was to be not less than $100. Charles Moore was a common laborer. He was not an acquaintance of mine, but through the influence of friends that I was acquainted with, he was introduced to me.

"Q. What was Elijah Taylor's business at that time, do you know?

"A. Well, he was a common laborer and gambler, and all kinds of things.

"Q. What was R. C. Taylor's business?

"A. Well, pretty much the same thing, both run games in saloons.

I do not know what John Lewis Gray's business was at that time, but I think common laborer was probably right.

"Q. Now, these people then would not be very responsible financially, would they?

"A. Well you might presume so—you might presume they were not very responsible financially.

"Q. What assurance did you give Mr. Tuman when Mr. Tuman was loaning this $400 that he would get the $400 back?

"A. I gave him no assurance at all."

I had no way of giving him any assurance not

(Testimony of John W. Aid.)

more than that they were honorable men and would pay back the money that they borrowed.

"Q. To pay back the money that they borrowed or turn over the land, which?

"A. That was not considered. [641]

There was nothing said about turning over the land.

"Q. Mr. Tuman was just out there running a charitable organization, just loaning people $400 without any understanding as to what he was to get back—he was expecting to get his back: Is that correct?

"A. I don't know, you can place your construction on it. I think he was a pretty good man to loan me money. All he had was my honor and my note.

He had my note and all the rest gave him notes, that is that borrowed money. The notes certainly drew interest. I have forgotten just what it was I think it was something like 7%.

"Q. And did you pay the interest on the money too? A. We certainly did.

All of them certainly had to pay interest when we came to settle up and we balanced the account. I do not remember where I gave Tuman the note. I hardly think it was in Prattville and I do not remember whether it was in Chico or Susanville.

"Q. You remember distinctly that you gave him the note?

"A. I remember he demanded the note, and we was to pay interest on the note, but just what the interest was on it I do not remember.

(Testimony of John W. Aid.)

"Q. Did you get your note back?

"A. We got the note back, I presume, at the time, I don't remember just now when he did hand the note back, but I presume it was when we sold the land to him. [642]

"Q. You think he gave the note back to you: You would not be positive about it?

"A. No, it is ten years ago, and I can't remember just when it did occur.

"Q. How do you know that the others gave notes, Mr. Aid?

"A. Because I told them that was the arrangement."

I did not handle the notes or have anything to do with them. I do not know if they gave notes to Mr. Tuman.

The MASTER.—"Q. In other words, you never saw the notes of these other people?

"A. I don't remember as to that?

I know that it was to be the consideration, that I told them that I promised to, and the consideration was with all as it was with me, practically no difference, as they received their money I supposed they must have given their notes, or it was agreed that they would give them. I do not know where the money was given to R. C. Taylor and Elijah Taylor to pay for their land. I do not know who handed them the money and I have no recollection of telling them where they could get their money or where somebody would hand them their money. I do not remember where I told Mr. Tuman that the Taylors,

(Testimony of John W. Aid.)

Moore, Butler and Gray would take up land if he would advance them the money; possibly it was either at Chico or somewhere about Prattville. Tuman passed through Chico frequently and I also saw him several times about Prattville. [643]

"Q. Did you tell him that before or after they made their entry?

"A. Before or after they made their entry?

"Q. Yes, that is before they looked at the land, was it before or after they looked at the land?

"A. Well, it was before. It was necessary for him to know that so he could prepare to do business with them, to loan them money and they to borrow money

I do not remember that there was any conversation between Tuman and myself. He just simply stated that he would loan them the money and that he would loan it practically on my assurance that they were honorable men. Of course I think he asked me if I knew these people, knew them to be honorable people, anyway as near as I remember that was the idea, he wanted to do business that were honorable people. The expenses of the trip were to be paid on their borrowed money, the money was to be advanced to them as it was needed, that is the way it was with myself and others, that is, if the money was needed it could be drawn.

"Q. Did Mr. Tuman advance this money to them?

"A. Yes.

I do not know whether he personally gave any of the party any money but I gave them some money to

(Testimony of John W. Aid.)

pay their expenses out of money that Tuman had requested me to give to some of the party, money to pay their expenses and filing on the land. He asked me to have the expenses figured up, what they thought it would be necessary for them to spend on the trip, and I think they arrived at the conclusion that they [644] could go on the trip for about $60, and I think that is about what it was. I went around and asked some of the party what they thought their expenses would be. I might have asked all of them or they may have asked me what I thought it would take for the round trip and I told them I thought it would take possibly about that, because I had made one trip, that is one trip over, and it was something like that on a round trip. I did not give each member of the party his proportion of the expense money. I think that Tuman asked me to give the money to someone of the party to pay all the expenses and I gave it to Bob Taylor.

"Q. Why did you give it to Bob Taylor?

"A. Because he was one of the party.

"Q. Why didn't you keep it yourself?

"A. I had nothing to do with it, nothing at all. He simply requested me to give it to these parties, to pay their expenses; in fact, they were hiring me to take them on the trip, and that was a part of the money, to pay me as well as other expenses of the trip, it was to come out of that money.

It is about 105 miles from Chico to Prattville and we went through Prattville and then on down through Greenville to Taylorville and out on to the

(Testimony of John W. Aid.)

land. I do not know the exact distance, it is something like 20 miles from Prattville to Taylorville and then over the mountains it is a half day's drive or so out to the timber. We were [645] gone a half day or so looking at the timber and then returned to Taylorville. We were about one day in going out from Taylorville; we went direct to Susanville, which is about 30 or 35 miles and we drove over in one day. In returning to Chico on the first trip we came back by way of Prattville, and it takes about two days to make that drive. The drive from Prattville to Taylorville can be made in one day, and then back one day from Taylorville to go out and look at the land. When we returned to Taylorville we went to Susanville, that took another day. From Susanville back to Chico took about two days. I do not know when I was paid the $4.00 a day for hauling the party on the trip. I know I had money to travel on.

"Q. Who paid you the money?

"A. Mr. Tuman. There was money to be drawn, I suppose, that is what he told me, money that they borrowed, he said that it was their money; he had advanced this money as it was needed; if there was not enough, the proposition was if the $60 was not enough, why, of course, he would have to advance more so as to pay it. I don't know anything about that?

I do not know whether it was exactly $60 or not that I gave Robert C. Taylor, but it was something like that. Mr. Tuman paid me $28 for the seven

(Testimony of John W. Aid.)

days' trip, but I do not think he paid me on my return to Chico as he was not there and I am not sure whether he paid me at the time or later on. I would meet him occasionally and he would pay me what was [646] due me.

"Q. Mr. Tuman paid you the $28 for the trip?

"A. Yes, I guess he paid me. I don't remember Taylor giving it to me out of that money, because I don't think there was money enough out of that $60, and I think that we drew on Mr. Tuman later on for that trip. I don't know as that would have mattered, if it had been $300 for expenses, they would have had to pay it.

Mr. Tuman told me that if the $60 was not enough to pay the expenses of the trip that he would advance enough more to pay the $28 that was coming to me. He had promised to advance money as it was needed, whatever it might be, so that if they did not have the money I went to Tuman and asked him to pay me for the work that I had done.

"Q. Then as far as you know, Mr. Tuman was to charge this up against their land; is that the idea?

"A. No, he was to charge it up against their note."

I do not know whether it was a blanket note or not. I never saw it; I don't know how that was arranged. It was outside of my line, any more than the proposition that had been made to me. I had stated to them the proposition that Tuman had

(Testimony of John W. Aid.)

made to me. I do not know who gave them the $400 with which they were to pay for the land. When they came to prove up, he, Tuman, was there or had a representative that paid them that money.

"Q. Who was the representative?

"A. That I disremember." [647]

I do not remember at the time I proved up on my land whether it was Mr. Tuman or someone else that gave me the money, but I think it was handed me at the same time it was handed to my brothers and my father, because we all proved up at the same time. The money must have been handed to us in Susanville, but I do not remember whether it was at the Land Office or at the Emerson Hotel, we were at both places.

"Q. Now, your father has testified that it was handed to him in a room at the Emerson Hotel. Does that refresh your memory at all as to where it was handed to you?

"A. I believe it was at the hotel, if I remember.

"Q. Your father has also testified that Mr. Arthur Elam handed him the money. Does that refresh your memory in any way?

"A. Well, I don't remember as to that, whether Elam handed us the money or not.

"Q. Now, where was this $60 that you gave to Robert Taylor, where was that given to you?

"A. It seems to me as though I met Mr. Tuman in the Park Hotel. I know I met him once or twice there, and he asked me where these people were, and I told him they were scattered around there at dif-

(Testimony of John W. Aid.)

ferent places at work, and he said, he requested me to hand it to them, because this was the money to pay the expenses of their trip, and he requested me if I would not hand it to one of the party, and so I met Mr. Taylor and handed him the money. [648]

I would see him around there every day or so and I do not remember where it was that I handed him the money, but it must have been in Chico. I am sure I did not give it to him in Taylorville, for we would have had about half the trip over before he had any money, it could not have been at Taylorville. I certainly must have handed him it at Chico when we started out and he attended to the affairs of the whole crowd. I do not remember where I made the arrangements with Mr. Tuman that I would be paid $4.00 a day for myself and team hauling people around, but I think it was when I started over with the Taylor crowd.

"Q. Well, now, you said that you were paid $20 for making the trip with your father and brothers the first time; is that correct?

"A. Yes, that is the first trip.

"Q. How did you figure out the $20, as the pay for that?

"A. Well, that was after we had got back, I went down to Chico with my outfit myself, it was on my own money. I brought them up there, and we went out and looked at the land, and told them we could borrow the money, but I did not get any money for that trip until afterwards."

(Testimony of John W. Aid.)

I did not figure the expense was $20 on any basis whatever. I just simply offered to charge them $20. I guess it cost me that much. That was for going down there and back. I had arranged that if they would take up the land, if they borrowed the money that I would bring them along and so I told them I would take them up there and see Mr. Tuman [649] and if they arranged so as to borrow the money, then, of course, I would have to make different arrangements afterwards.

"Q. Make arrangements afterwards. What arrangements?

A. Why, necessary to carry it through. I could not carry them all through at my expense; they would have to pay my expenses, but I did that simply because it was my father and brothers that I took up there; pretty near the whole crowd was my own family, and I had not arranged to get any pay for it.

"Q. Who did you make arrangements with to get pay?

"A. Mr. Tuman, after we had agreed that we were to borrow the money and take up the land, it was agreed then that my charges would be paid at $4 a day. I said I would have to charge $4 for my time and my team's time.

"Q. You told Mr. Tuman? A. Yes.

"Q. You charged Mr. Tuman that, did you?

"A. I charged these people that I took out.

"Q. You mean you charged your father and brothers $4 a day?

(Testimony of John W. Aid.)

"A. He was to furnish the money to pay my wages for these people, that is, they were to pay it out of what they borrowed, pay me $4 a day.

"Q. Pay wages for these people?

"A. No, I said they were to pay me $4 for my team and for my time; they had arranged to take up the land, and they had arranged to borrow the money, so there was [650] an opening for me to charge for my outfit. But previous to that time I had not."

I did not say that I had bargained with each of these gentlemen that they were to pay me so much for taking them up, hauling them around on this trip. They understood that I was charging $4.00 a day for my team and my rig. They certainly understood that, because that was part of the expense money that was being drawn on, the money that they borrowed.

"Q. Did you father understand that?

"A. They understood that that money was to be paid out of the money they borrowed.

"Q. Did your father understand that?

"A. I suppose he did, he ought to have.

"Q. Did Elijah Taylor? A. Everyone did.

"Q. Did Elijah Taylor understand that?

"A. I don't know; I presume he did.

"Q. You presume he did. How does it happen that you were hauling these people around without having any understanding with them as to whether you were to get your pay for hauling them around?

(Testimony of John W. Aid.)

"A. Well, they had to hire someone to haul them around.

I did not go to them and suggest that they could take up the land. They came to me and asked me what the arrangements were, and I stated to them as I have stated to you.

"Q. Did you go to Elijah Taylor, or did he come to you [651]

"A. Well, I am not sure, but I think he must have come to me.

"Q. You think he must have came to you. You have testified that you went to him. Do you want to change your testimony in that respect?

"A. That I went to him.

Q. "Yes. A. Where did I state that?

WITNESS.—"I think it is quite right to say that after I had taken my brothers and my father up there, why it was generally understood around, and people voluntarily came to me and asked me about this thing, I did not hunt for anybody. Of course, there was a great deal, a great many people that asked about this, but I did not talk with everybody, because I didn't care to give them any information about it. It is quite possible that we might have met on the street and talked about this; I did not hunt him up and persuade him, and make any special effort to see him—as far as anything of that kind being done is concerned, I have no recollection of it."

I think I talked personally with Mr. Gray, in fact, all of the party came to me and talked to me,

(Testimony of John W. Aid.)

every one of them. I made the same arrangements with Mr. Gray as I did with all the rest of them, just simply stated the facts of the case as they were stated to me. I talked with Robert Taylor and Mr. Moore and all of the rest of them about the same way. I cannot tell you the conversation that I had with Elijah Taylor about taking up the land because I don't [652] remember it. I do not remember what he did say about not wanting to have his money tied up in the land for an indefinite time. I know he did say he could use money of his own instead of borrowing money, he told me that. I do not remember that he said that he wanted some assurance that the land would be taken off his hands and if he did it would not help him because I had no way of helping him out on that. I did not tell him the land would be taken off his hands because I had no assurance of that. The supposition was that it would be because we knew the company was buying all the land they could get, at least we had that impression.

"Q. What company?

"A. I think it was Holbrook and something—Curtis, Collins & Holbrook Company, I believe that was the company—I think Mr. Tuman told me that was the company he represented.

"Q. He told you that he represented them?

"A. I don't know whether he used exactly those words—I don't know whether he told me or not, but I was under the impression that they were locating land by scrip, State scrip and school scrip

(Testimony of John W. Aid.)

and so on, they were buying all the land they could get; and furthermore, why I think I asked the question at the time we were borrowing the money, I says: 'I am not compelled to sell my land, am I, to anyone,' and he said, 'No, you are not.' That is what Mr. Tuman told me. He said, 'If you should want to sell, you can sell to whoever you can get the best price for it.' He said: 'That would be your privilege'; but he said, 'In case you sell, we would expect you to pay us the money back which we loaned you, of course, to buy the land.' He said: 'You are not compelled to sell [653] the land to us.' That is what he said.

"Q. Was anything said about his liking to buy the land, about his wanting to buy the land?

"A. No, he did not mention that; I don't think he mentioned that fact. He mentioned the fact that they would buy the land."

I do not know as he said that they would like to have the first chance if we sold. There was something similar to that, that if we sold our land they would like to have as good a chance as anyone else in buying the land. I says, "Certainly, we would consider you as we would the others—if we had an opportunity to sell to others, of course if they would pay more money than you are willing to pay for the land, that is up to us, to get the most we can for our land," and he said: "Certainly that is your business." I do not think that Tuman said that he wanted to have the first chance to buy

(Testimony of John W. Aid.)

the land but he wanted to have as good a show as anyone else.

"Q. Well, what did he say in respect to that?

"A. Well, as I say, he said they were buying the land that is timber land, and I says, I think I said, 'How much would they pay for the land, and he says, 'Well, it would depend somewhat on the quality of the land, on the timber, what we pay. But, he said, we don't pay less than $100 and for some he told me they paid as much as $300 for the land; I told him of course we want a piece of land that would command a good price, if we was to sell. I didn't know, whether, by borrowing the money I might be bound to [654] sell in a way to them, and I asked him, and he said not at all, he says you are at liberty to sell your land to anyone you want to. He says if you want to sell you can sell your land to anyone you want to. You are at perfect liberty to do so, to sell to who you wish, you are not bound to sell your land to us.'"

I do not remember telling him that I would give him the first chance; if I did that, that would bind me to take whatever they wanted to offer me for the land and I would be bound by that.

I did not tell Tuman that I would give him the first chance to buy the land at whatever price I could get, that if somebody came up and offered me $300 for my interest in the land that I would go around to Tuman and tell him that I could get that price for my land and if he wanted it at that price he could have it. There was no arrangement of that kind.

(Testimony of John W. Aid.)

"Q. What did you tell him you wanted a good piece of land for, he was not locating you, was he?

"A. No, Mr. Tuman was not.

"Q. Mr. Tuman knew how you were going to be located, didn't he?

"A. I don't know, he didn't tell me.

It was perfectly natural that I should want to be located on a piece of timber land that was worth $300 rather than upon a piece that would not bring that much. I do not know why I made the statement to Tuman that I would like to have a good piece of land any more than I would have made the statement to anyone. He had no particular place to tell me to locate. [655] I remember the time that I went out to look at the land near Taylorville that I later filed on. It was not as good timber as I had seen in other sections of the country. I had seen other sections of the country where the timber was better and more of it.

"Q. Well, now, did you make any kick to Mr. Remick about it?

"A. I think I mentioned something about it; it was not as good timber as I had seen.

"Q. Did you ask him to show you other timber?

"A. No, I don't remember that I did ask him that.

"Q. Why didn't you?

"A. Well, he was locating us, and I supposed he was not interested in any patch of the country there except what he knew was vacant. I had seen timber land all over that looked good to me, but when I made some inquiry, I would find it was either located by

(Testimony of John W. Aid.)

someone or else had belonged to some company for some time."

I do not think that I made any kick to Mr. Remick at all, I simply remarked that it was not quite as good timber as I expected.

"Q. What did Mr. Remick tell you?

"A. Well, I don't remember what he did say.

I would have to take that piece of timber land or else, run the chance of finding some somewhere else. It was a pretty hard matter to find timber to locate on. I went to the land office myself at Susanville and got a plat of quite a section of country in about Eagle Lake and I intended to go [656] up there with about two or three to locate some timber over there but when we came to look into it I found some of it was school land, some was Indian land and so on, and so we concluded not to bother anything about it.

"Q. When did you conclude this?

"A. Well, it was about that time."

There was a party that lived in Susanville that wanted to take up land. I told him I had a plat of that country over there in along the south side of Eagle Lake as near as I understood the lay of the country

"Q. Did you get this plat before you went out and saw Mr. Remick?

"A. No, I did not do it before I saw Mr. Remick.

"Q. You filed on this land, didn't you?

"A. Yes.

"Q. What was your object in going and getting this plat of the country over around Eagle Lake?

(Testimony of John W. Aid.)

"A. I had a friend in Susanville who wanted to locate land. I told him I thought there was Government land there to be located, and I assisted him, and we went to the Land Office, and I got this plat from the Land Office of this particular section of the country that I knew some people in, that lived over in that part of the country, and they had said they thought there was Government timber land that lay off in the mountains above their land there, Cartwright, so I simply wanted to look it up for a friend."

I was not interested in it at all myself because I could not take it up. The reason I consented to locate on the land that was shown me by Mr. Remick even though it was not as good a quality of timber as I had seen, was because [657] I did not want to look over two or three counties and spend several weeks' time and be at a good deal of expense in looking up land and then possibly I would not find anything whatever. There was lots of land there, but when you came to figure about it, someone had already located on it and filed on it. It was a pretty hard matter to find a piece of land that was not filed upon.

"Q. Now, you say that this conversation that you had with Mr. Tuman was in Prattville, as regards the borrowing of the money, is that correct?

"A. Yes, I think it was in Prattville."

That was the first time I ever saw Tuman. After making arrangements about borrowing the money from him I went to Chico and brought my father and two brothers up there and Mr. Rhodes came with us. I think he went down and came back with us; he came

(Testimony of John W. Aid.)

across the mountains with me. We had been haying in Susanville. When I got back to Chico I arranged with Tuman for a loan of $400. He promised he would loan me money and those that I knew were respectable people. I did not know whether they wanted to take up land or whether they didn't so I went down and saw them and brought them up. That was the time I charged them $20 for going down and coming back; that was after we had arranged to locate the land and were preparing to go over. In the meantime, I had seen Mr. Remick and knew that he was locating them. I first saw Mr. Remick at Prattville. I do not remember the date. I think it was the same day or the second day after I had met and talked with Tuman in Prattville. I think that I talked with Remick first before I [658] met Tuman. I inquired if he had Government land that he could locate people on and said he had, and he said he charged $25 for locating them. Mr. Remick did not send me to Mr. Tuman; I do not think that he mentioned Mr. Tuman's name at all. All this I learned from other people that were locating claims and he was pointed out to me as a man who had loaned others money and I thought it might be I could borrow money too. The next time I saw Remick after I met him in Prattville was when I went over to locate the land. I am not positive, I might have seen him between that time. I remember very well the time I saw him in Prattville, as there was a great stack fire that night and they took about all the men in the country to

(Testimony of John W. Aid.)

put out the fire in the haystack and save the town from burning. Remick was pointed out to me as the man that was locating claims and I approached him directly about it. I do not remember whether or not I saw him between the time that I met him at Prattville and the time I went over to Taylorville to locate on the land. I do not remember having any conversation with Remick about locating on timber land between those dates.

"Q. You don't remember?

"A. Any more than to state that me and my father and brothers had, none of us, ever used our rights, and we would like to locate some timber land.

"Q. Did he tell you where his address was?

"A. Yes, he told us."

I knew that he was a timberman and it was also [659] stated to us by some friends that he had some timber and was locating people on the land. After that I met Mr. Tuman and arranged for him to loan me money to take up land. At the time I talked with Mr. Remick I wanted to take up timber land but I didn't know whether I would or not.

"Q. Now, when you were paid this $20 that you were paid for this trip which you made yourself with your brothers?

"A. After we had arranged with Mr. Tuman to borrow the money, and we came back, I think it was at Prattville, either at Prattville or Chico—I don't remember whether it was at Prattville on

(Testimony of John W. Aid.)

the way back or later on—either at Prattville or Chico; I could not state as to that. I made light charges on account of having our own family, only $20, I could not go up in the mountains all the time for that."

I remember being paid $20 for this trip, but whether it was at Chico some time when I met Mr. Tuman or at Prattville I could not say, but Mr. Tuman paid me this money, as he agreed to advance the money if it was needed, and I charged only $20 for that. I made it low on account of its being my family. I only wanted to cover the expenses. So far as wages and time are concerned, I did not charge for it because it was my own and my family's claims which were taken up. After that, then I said to these other people, "I want to be paid wages for myself and team if I haul the people up into the mountains," they would have to pay me because I couldn't do for them like I could for my own people. Consequently the next trip there was a $4,00 a day charge for it.

"Q. When you were hauling your own people out there to look at the land, why did you charge him $20 for that? [660]

"A. For expenses.

"Q. Why should you charge Mr. Tuman that at all?

"A. I say he advanced it out of the money we were to borrow, that was the proposition.

"Q. Why didn't you communicate this fact to

(Testimony of John W. Aid.)

your father, that you were borrowing money from Mr. Tuman?

"A. He certainly knew that we were borrowing the money.

"Q. He knew you were borrowing money?

"A. He certainly knew that he borrowed money. He is an old man and he might not have understood the details of it as I understood it.

"Q. Did he give his note for the money?

"A. He certainly gave a note the same as I did. My brothers certainly gave a note the same as I did, that was the proposition.

"Q. Where did they give the note?

"A. That I don't know.

"Q. You don't even know where you yourself gave the note, do you?

"A. It was either at Chico or Prattville—Prattville, I presume, I gave the note. But then that was the proposition, we should give our note for the money that we borrowed, that was the understanding. Then I think each and everyone that borrowed money, at least on my advice, that I passed to them, the note was executed the same way, if they borrowed the money they must have given their note. Whether they understood just that way or not, why then I could not say, but then they should have understood it that way, because I tried to explain it so that they would understand it that way, because the proposition was the same with [661] me as with the others, exactly the same thing, and unless they furnished the money

(Testimony of John W. Aid.)

without borrowing it—of course if they had their money to go ahead without borrowing, it would be different, of course.

"Q. Now, Mr. Aid, didn't you as a matter of fact, hand the money to them in the Emerson Hotel, that is, the Taylors and Mr. Butler—didn't you hand them their $400 apiece?

"A. I have no recollection of that.

"Q. You remember they were up in the Emerson Hotel don't you? And they were given their money in the Emerson Hotel?

"A. It is my impression that is where we got the money, at the Emerson Hotel, but I am not positive as to that, whether it was; it certainly must have been at the Emerson Hotel or at the Land Office, one of the two places. We put up at the Emerson Hotel."

When we sold our land, my father, my two brothers and myself got our money at the same time in the Park Hotel at Chico. We were paid in a group right together and Tuman handed each one of us $100 and we must have delivered the deeds when we sold the land. I do not remember how we knew that Tuman was to be at the hotel that day to buy the land. Of course we met him there by appointment some way but I do not remember just exactly how the appointment came about.

"Q. Did you get anything besides the $100 that day?

"A. No, that is all I guess we got. [662]

"Q. That is all you got?

(Testimony of John W. Aid.)

"A. Yes. We sold the land to them because there was no one offered us a better price for the land. If someone had offered me $300 for it, I certainly would have sold it to somebody else besides Mr. Tuman before he got there."

After we made our final proof I brought my brothers and Mr. Rhodes back to Chico but I do not remember what we did after our return. I guess we went to work or done something else, I do not remember what we did do. When Elijah Taylor, R. C. Taylor, Moore and Butler made proof I went along as I hauled the party over across the mountains, all except the two Taylors, they went around by rail. There was a snowstorm, they would not ride in the rig. They said they would rather go around by rail. That was their privilege and they went. I do not remember how long it was after I got home from my first trip before I started out to take them back to make final proof. After they had made their final proofs at Susanville I brought them back as far as Prattville. I do not know whether the Taylors and Gray sold their lands when we were in Prattville on our return. In fact, I know I didn't. I do not know whether they sold their land as that was outside of my line. I was hauling them back through the mountains and doing that for $4.00 a day. I think Tuman was in Prattville when we arrived there on our return, but I could not tell you why he happened to be there. I think I remember that when we were in Prattville Lige Taylor said something

(Testimony of John W. Aid.)

he wanted the money for all of his expenses before he would transfer his land, but I did not understand [663] just what he meant as he went around by Reno and I had nothing to do with the expenses of his trip and I did not reimburse him for the expenses in going around that way. I have no recollection of anyone handing me money to reimburse him for those expenses after we got back to Chico. I had nothing to do with it and I do not know anything about it.

"Q. He paid his own money around by Reno, but didn't you reimburse him for the money he was out on that trip?

"A. No, I did not, I had nothing to do with it."

I think it was the first time that I ever met Tuman that I had the conversation with him in which he told me that he would advance money for me and anybody that I would recommend to pay for timber lands. That was in Prattville and that was the only time that I talked with him.

"Q. Did you give him any references at all as to who you were? A. No, I did not.

"Q. And he subsequently loaned money to everybody that you recommended, didn't he? A. Yes.

"Q. Now, isn't that a pretty risky business proposition, for anybody to take, to loan money, let me see, there was 10 times 400, that was $4,000 to people that you had recommended without knowing you or without knowing any of them, wasn't it a prettty risky business proposition?

"A. Well, some people might have told him that

(Testimony of John W. Aid.)

I was all right, I guess I looked all right to him. [664]

"Q. I know you looked all right personally to him, but how about your judgment of human nature to know whether this man or that man could be relied on?

"A. He might have other people's judgment on me as I had my judgment on those that I talked with, the same thing. There is other people that I knew as well as I knew the people that I spoke to.

"Q. Well now, to part with $4,000 without any kind of security at all, is a pretty big business risk, isn't it? Wouldn't you hesitate a long time before you would part with $4,000 to strangers?

"A. Well, I have risked money on people's honor.

"Q. Strangers? A. Well, comparatively so.

"Q. Comparatively so?

"A. Yes; I thought it was all right. They needed assistance and I gave it to them.

"Q. You loaned $5.00?

"A. Well, that is about all I could raise I expect, maybe.

"Q. What assurance did you give him that these people would make good on this loan if he advanced them the money?

"A. Well, the only assurance about it was my judgment on these people as being honorable people. He simply trusted to my honor as to their being honorable men, the other people that I con-

(Testimony of John W. Aid.)

sidered to be honorable people too—the people that were considered to be honest people.

"Q. Well, it takes a little bit more than honesty to secure $4,000 doesn't it, Mr. Aid—you might be very [665] honest, and if you haven't got the property to back it up, you couldn't pay the money, could you?

"A. Those things are done sometimes.

The MASTER.—"I think this is a matter of argument.

Mr. PIER.—"The whole thing is, he is dodging the real point.

The MASTER.—"Put the question to him direct.

Mr. PIER.—"If I put the question to him direct he answers me in a way that he is holding it up.

"Q. Now, Mr. Aid, just tell us exactly in your own words, what was Mr. Tuman's basis upon which he advanced the $400 to each of these entrymen.

"A. How could I say?

"Q. You had the whole negotiation of these loans with Mr. Tuman, you knew what he was working on, what basis he was working on?

"A. Why should I know, he didn't tell me.

"Q. You know what you told him, everything he knew about this proposition is what you told him?

"A. What I told him?

"Q. What you told him about these various men, that was the basis upon which he made these loans, Now, what did you tell him that caused him to make this loan of $400 to each man?

"A. I didn't tell him anything at all any more

(Testimony of John W. Aid.)

than it was left to my judgment to select the people, that is, not to deal with people, or to have people or to cause them to locate that was not honorable people—of course, that was the impression I had. [666]

"Q. Well, you were then to cause people to locate on the land?

"A. In a way, if they asked me, I would tell them just what I had done, and they would do the same thing.

"Q. Didn't you have an understanding with Mr. Tuman that you were to explain to other people just what you had done?

"A. There was not exactly an understanding of that kind.

"Q. Was there not an understanding of that kind —didn't you talk it over with him along that line?

"A. Well, as I said, there was room for others to take the land up, and he would loan them the money to take up the land, just as he loaned it to me, and I told these things to these people if they wanted to avail themselves of that opportunity it was for them to look into and do so; if not it was nothing to me.

"Q. Mr. Tuman told you there was room for other people to locate, did he?

"A. He did not say that.

"Q. Why was he interested in people locating, if there was not room for them to locate?

"A. As I said quite a while ago, he would loan the money. That is for you to draw your own conclusion. I would judge why he wanted to loan the

(Testimony of John W. Aid.)

money but he didn't tell me why.

"Q. He didn't tell you why?

"A. No, I couldn't tell them why when he didn't tell me why.

"Q. Didn't you tell him whether or not these people [667] would sell the land to him when they located on it?

"A. I didn't tell him that because I didn't know whether they would or not."

They could do the same as I did because as I said, I didn't want to bind myself to sell the land to anybody if I borrowed money to take up the land and he said, "You are not bound to sell the land to anybody, you are at liberty to sell to anybody." I also said the same to the other people.

"Q. Of course he would say you were not bound, there was no way in which he could bind you, but what I want to know is this: what kind of a statement did you make to him in taking up this land that caused him to loan you the $400 what was your exact proposition on which he consented to loan you the money?

"A. Well, as near as I can remember, I was told by the people, that there was a man pointed out to me as a man that would loan money.

"Q. What did you figure him out as, as a loan shark?

"A. I don't know as it would make any difference about that, just so I could make the borrow and get the money and get the land.

(Testimony of John W. Aid.)

"Q. And get $100 after you had proved up, was it not?

"A. No, I was going to get more if I could get more."

If I took up the land I wanted all I could get out of it. I understood that some people were getting $300 for their claims over and above expenses.

"Q. Did you make any dicker with him about the [668] $100 being to small? A. No.

"Q. You did not?

"A. I did not make any dicker no."

I think I remember saying something about that was not enough for good timber land. I said I would not want to borrow money and bind myself to take $100 for the land; sell my land to anybody for $100. He said, "You are not bound to sell to anybody." He said, "You are at liberty when you take it up you can sell it to anybody that you want only we want the money returned that you borrowed."

"Q. When you came to sell the land, was there any question raised about the price when he came to the Park Hotel and handed you the $100?

"A. I don't remember whether there was any dicker on the price there.

"Q. You did not dicker on the price there?

"A. No.

"Q. Had you ever dickered on the price before that time when you went to the Park Hotel?

"A. No.

"Q. When you went to the Park Hotel how much did you expect to get?

(Testimony of John W. Aid.)

"A. I had concluded that that was the best price that I could get, and that all we could get would be $100.

"Q. You expected $100?

"A. I expected it; I concluded I would have to take the $100 because I couldn't get any more. [669]

"Q. You expected to get $100 for your land?

"A. Yes.

"Q. Your brothers expected to get $100?

"A. Certainly we expected to have to take $100. We all expected to take $100. He said they would pay $100 and we came to the conclusion that we would have to take that. We held it for three weeks after that, and we needed the money, and we thought it better to sell.

"Q. Did you communicate to Tuman that you were willing to sell to him?

"A. I had seen him previous to that time.

"Q. When did you tell him you were going to sell to him? A. I don't remember.

"Q. Well, now, just tax your memory a little about it, and tell us when you told Mr. Tuman you were going to sell?

"A. I don't remember, when it was or just when it was, but I met him several times about Prattville and other places, in shifting about.

"Q. Was anything said about the price in Mr. Stilson's office?

"A. I have no recollection of it.

"Q. Where did you first meet Mr. Tuman on the day in which you sold him the land?

(Testimony of John W. Aid.)

"A. He was at the Park Hotel.

"Q. Did you see him at the Park Hotel before you signed the deed? A. I don't remember as to that.

"Q. How did you happen to go to Stilson's office?

[670] A. Because he was a notary public.

"Q. I know, but had you been given the deed before that time—had you signed the deed?

"A. That I don't remember, whether he drew it or whether it was drawn.

"Q. Who told you to go to Stilson's office?

"A. I think we did because I very often did business with Mr. Stilson.

"Q. How did Mr. Stilson know how to prepare the deed? A. That I don't remember.

"Q. Did you know who the deed was to be executed to?

"A. I don't remember that he drew the deed; I ain't sure.

"Q. Now, where did you get the deed that you executed?

"A. That I don't remember, I couldn't tell you.

"Q. Just think it over, Mr. Aid, and figure it out where you got that deed to execute?

"A. If we didn't get it there of Mr. Stilson at that time, I don't remember.

"Q. Did you see Mr. Tuman before that time?

"A. I had seen him a good many times, I am not sure that I saw him that day.

"Q. Did you execute the deed the day you sold the property? A. That I don't know.

"Q. Well, now, just tell us, did you see Mr. Tuman

(Testimony of John W. Aid.)

[671] more than once on the day on which he purchased the land?

"A. Well, I couldn't tell you whether we did or not.

"Q, Did you see him before you gave him the deed and got the money for it? A. Before?

"Q. Yes.

"A. I saw him at the time, I remember that.

I do not remember that I saw him on the day that the deed was delivered and the money received before the deed was actually delivered to him.

Mr. PIER.—"Q. Now, at the close of the examination at noontime, we were discussing the question as to the first time that you saw Mr. Tuman on the day you sold him the land; do you remember when was the first time you saw him on that day?

A. No, I don't remember.

I don't remember whether I saw him before the deed was delivered; I don't remember at the time I saw him whether it was before or after dinner or what time of the day it was that I delivered the deed to him in the Park Hotel.

"Q. Did you have any talk with him before you gave him the deed?

"A. Not that day I guess; it seems to me that is the first time I seen him that day, when we met at the hotel, if my memory serves me right.

"Q. What did you say at that time? What was the conversation that you had with him at that time, at the time you delivered the deed?

"A. Well, I really don't remember.

(Testimony of John W. Aid.)

"Q. Did he ask you if you had the deed?

"A. I don't remember what he asked me. [672]

"Q. Did you tell him what you were there for?

"A. I don't know whether he told me or I told him."

It seems to me that I met him there by appointment that day. Just what we did say I don't remember. I don't remember if my brothers and father and myself were together in Stilson's office to execute our deeds. Stilson was a notary public and I had often gone to him.

The MASTER.—"Q. Did you make this appointment with Mr. Tuman by a letter from him?

"A. I suppose that I must have received a letter from Mr. Tuman that he would be at the hotel on that day, and to come and see him."

I do not think that he made any statement in the letter about going to Stilson's office. The only statement was that he would be in Chico at that time at the Park Hotel and for me to go to the hotel and see him. I think that is as near as I can remember it. I think that is about the sum and substance of it.

Mr. PIER.—"Q. Well now, how did you know to have Charles E. Gregory's name put in the deed as the name of the person to whom you were to convey the land?

"A. Well, possibly I was assisted in that.

"Well, now, who assisted you?

"A. He was the purchaser or it would not have been deeded to him.

"Q. Who told you that he was the purhaser?

(Testimony of John W. Aid.)

"A. Mr. Tuman must have told me.

"Q. When did he tell you? [673]

"A. It must have been then.

"Q. Then you could not just have written his name in at that time?

"A. Well, it would not have taken long to do that, after I started to do it, if it was necessary to have it written in there.

The MASTER.—"Q. Who prepared the deed?

"A. That is something I can't remember.

"Q. Did Mr. Stilson have it ready when you went in there? A. I don't think so.

"Q. You brought it there?

"A. As near as I can remember, why, he possibly prepared it that day after we went there to have it done.

"Q. That is, you went there and you gave Stilson the things that you wanted to go in the deed?

"A. I presume that is the way.

"Q. And he drew the deed for you as well as took your acknowledgement. A. I presume that is it.

"Q. You don't know?

"A. No, I am not positive as to that, just how that was.

Mr. PIER.—"Q. Now, did you have any talk with Mr. Tuman about selling your land to him any time after you had your first talk with him when you arranged about borrowing money to take up the land?

"A. Not that I remember of."

I think I understood it all at the same time and I [674] think that was about the only arrangement

(Testimony of John W. Aid.)

that was made in regard to it.

"Q. That was the arrangement when you arranged to borrow the money, is that correct?

"A. Yes, if ever I talked the matter over after that I don't remember it.

"Q. Now, Mr. Taylor has testified here that you came to him and suggested the taking up of the timber land. Do you remember now whether or not you went to him or whether he came to you.

"A. No, I do not. Where did he say that I went to see him? If you were to say that maybe I could remember if I went to see him.

"Q. He stated that he came to Chico and that he was in Chico.

"A. He came to Chico? He was already there. He lived in Chico.

"Q. But he testifies that he had been away in the country up beyond Susanville on some trip, and that when he came to Chico you came to him and asked him if he had exhausted his timber rights, and that there was an opportunity to take up some timber land and make some money out of it, and that the expenses would be paid. Now do you remember going to Mr. Taylor and speaking to him about taking up timber land at all at Chico?

"A. I don't remember of going to him and approaching him in any such way; I don't remember it at all."

I do not remember that I ever hunted for Mr. Taylor and explained things to him in that way at all. It might [675] have been that we met some-

(Testimony of John W. Aid.)

where and I told him about this somewhere on the street; as I say, there were those that heard about it and they would oftentimes meet me on the street and they would ask me about it and I would explain to them about it, but as to my ever going to him personally and hunting him up to tell him about it, I don't think I did. I don't remember about it.

"Q. Mr. Aid, you have testified that there were some 50 or more that came to you and asked you about taking up land; is that correct?

"A. Well, there was a good many. Possibly it might have been more than that, there might have been 100; there was a good many that were anxious to inquire about and learn about it.

I picked out these particular five of all of those that came to me to find about taking up land because they were personal friends of mine.

"Q. Were not the others?

"A. Some of them might have been working together with me by day's work."

Some of the others that came to me later on possibly were my friends. You know the longer the time the more this was spread about and the news would multiply, and more people would come and ask about it. That is the way it was. The reason that it took a week's time to make up this party of five men was that I was not putting in my time going about to get locators. I had other business of my own.

"Q. But if other people came to you and were talking to you about it, the first five that came along

(Testimony of John W. Aid.)

would be all right, wouldn't they? [676]

"A. Oh, no.

"Q. Why wouldn't they be all right?

"A. Simply because they would not be people to my liking, that is, not in a business way.

There were men that I would sooner favor with the information that I had.

"Q. The information that you had. Now, what information did you have?

"A. The information that there was an opportunity for them to borrow money and to locate land, I would not tell everybody because I did not feel so disposed to bestow any favors to this man or that man.

"Q. You considered that you were doing people favors when you were doing that?

"A. Yes, sure, why shouldn't I? I wasn't getting paid a cent for it.

"Q. You were getting $4.00 a day for hauling them up there, weren't you, for every day that you were out?

"A. I could haul Chinamen up there at the same price, and get paid the same, if they had the money to pay me—that was the difference.

"Q. Well, now, then, there was nothing in the personnel of these people that prevented you from using your team to haul them up there, was there? One man at $4.00 a day is just as good as any other, isn't it? A. Not in all cases.

"Q. Especially when Mr. Tuman is furnishing this $4.00?

(Testimony of John W. Aid.)

"A. Well, you see it rested upon my honor you see, to get the people that I considered honorable people, to borrow that, and consequently all people would not answer the [677] purpose.

"Q. All people would not answer the purpose because you wanted people that you considered to be honorable people.

"A. People that I considered to be honorable.

"Q. Well, now, who were some of the people that came and spoke to you about the land?

"A. There was a good many people about town there that would ask me in a way, you know, about it, that I didn't give any satisfaction.

"Q. Who were some of them?

"A. Well, there was a man, I think, by the name of Goe. He asked me—I think he tried to ask me one time about it.

"Q. What did Mr. Goe do?

"A. I never had any dealings with him.

"Q. What is Mr. Goe's business?

"A. At that time he was Deputy Constable. I think.

"Q. Anybody else ask you about it?

"A. I believe Mr. Peters did.

"Q. Mr. Peterson?

"A. Mr. Peters, I think he asked me about it.

"Q. What is Mr. Peter's business?

"A. Well I don't think he was at that time but he was later on a night watchman.

"Q. He was living next door to you?

"A. Yes, he was doing simply odd jobs."

(Testimony of John W. Aid.)

There were others spoke to me but I do not remember exactly who they were. I do not want to say too many that came to me unless I am sure that they did because there were so many I just passed on and never gave them any thought. [678]

"Q. Mr. Goe is the town marshal of Chico at the present time?

"A. No, it is a different Goe.

"Q. What is the first one that came to you; what is his first name? A. I think it was William.

"Q. What is the name of the town marshal?

"A. His name is Hill Goe.

"Q. Well now, what was there about Mr. Taylor that would commend him to you as a man of honesty and integrity over and above Mr. Goe?

"A. Well, that is just only—it might have been all personal. He came to me and others did.

"Q. What was there about Mr. Peters that would commend Mr. Taylor to you above Mr. Peters?

"A. There was people, a good many, that asked me about it, that I thought later on if I did not have a load going over that possibly would be considered as good men, that were not turned down because they were not good men—I did not know anything about them before.

"Q. Why should you take Mr. Butler along, a comparative stranger, when you know Mr. Peters and Mr. Goe?

"A. Because I knew the parties that knew him and told me about him.

"Q. Why should you take out practically a

(Testimony of John W. Aid.)

stranger and confer a favor on him and pass by a man who was a friend of yours?

"A. I say he was spoken of to me by friends of his who was also friends of mine.

"Q. So Mr. Butler was over anxious to take up the land? [679]

"A. I don't know whether he was over anxious or not.

"Q. In other words, he had to exercise a pull to get into your party?

"A. To some extent you might word it that way.

"Q. In other words, you were conducting parties that required pull to get in them, locating parties that required pull to get on them?

"A. I did not look at it just that way."

At the time I made final proof at the Land Office and paid the $400 I got a receiver's receipt but I do not remember what I did with it, but I suppose we must have kept it until we turned over our land and deed to the property at the time we turned it over to Mr. Tuman. I did not have charge of the receipts of my father and brothers, they would not have given them to me. I do not remember how long I kept my receipt but I know I did not keep it any longer than I kept the land.

"Q. Who did you give the receipt to? Did you give it to anybody?

"A. I say I must have turned them over to Mr. Tuman.

"Q. Well, you know whether you gave him the receipt or not?

(Testimony of John W. Aid.)

"A. Well, he certainly would demand it, wouldn't he?

I do not remember just exactly how the transaction was, but if it was necessary to turn the receipts over we certainly did so. [680]

Cross-examination.

Mr. SHURTLEFF.—"Q. How is your memory, Mr. Aid, about these different money transactions concerning which you have testified?

"A. Well, I would not consider that it was absolutely clear in all these things. A man cannot remember every little bit of an incident that happens ten years ago; I don't believe we ever can."

I received certain information touching the entry of timber land in a conversational way from Mr. Eastman and Mr. Hensley. That was before I met Tuman. I do not remember whether Hensley and Eastman were together when I talked with them or not. It seems to me there was someone said that Hensley and Eastman had taken up timber land and as I was acquainted with them I asked about it and as near as I can remember they informed me that they had. I think I told them that I would like to take up timber land but did not have the money to carry it through and they said I could borrow the money to take up this timber land and I said that if I knew who I could borrow it from I would like to take up timber land and use my right while there was timber land to take up.

The MASTER.—"Q. I want to find out who Mr. Hensley and Mr. Eastman are.

(Testimony of John W. Aid.)

"A. They are both residents of Chico or near Chico, one of them owns a farm near Chico and the other lives in Chico.

I knew them in Chico at the time. They had been [681] prospecting up in the mountains and were returning and were stopping at Prattville when I met them. The conversation that I had with them was somewhere about Prattville where they were camped.

Mr. SHURTLEFF.—"Q. You are certain, are you, Mr. Aid, that Mr. Tuman loaned you or advanced you moneys to be distributed to others to be used by them in going to view the land and make their application, their entry?

"A. That he loaned me money?

"Q. That he gave you money for them before they went to look at the land—you are certain about that, are you? Do you recall that distinctly in your mind, that he did it before?

"A. Well, now I don't remember as to that."

As near as I can remember when it was settled that they were going over to locate land, that he furnished the money for them to go over with, but not until then.

"Q. That was before they did go?

"A. They had not gone over yet; they had concluded they would go, and this money was to carry them over and make filing, but they had not filed on the land; they were going there for that purpose.

(Testimony of John W. Aid.)

"Q. That is your best recollection; you think that is what occurred?

"A. That is my best recollection."

The total amount that I received for my claim after all expenses were paid amounted to $100.

"Q. Did that expense include the $400 that you had [682] paid to the Land Office, or that had been loaned you as you testified, by Mr. Tuman?

"A. Well, you see he figured out you know when he took the land what the expenses were.

"Q. What I want to get at, Mr. Aid, and it is very simple, you borrowed the money, you say, from Tuman, $400 or thereabouts to pay for the land plus your expenses?

"A. Well, we gave our notes for the necessary amount, you see.

"Q. Did you ever pay it back to Mr. Tuman?

"A. That was reckoned in when we sold the land; of course it was not always the same, I suppose.

"Q. I just want to get at the general proposition?

"A. The proposition was that they paid not less than $100 to nobody.

"Q. You testified that it was rumored that they were purchasing all the land they could by the application of scrip. Who did you mean by 'they'?

"A. How is that?

"Q. Who did you mean by that it was rumored in the community that they were purchasing all the land or locating or selecting land, all that they could get?

(Testimony of John W. Aid.)

"A. That came about in a roundabout way, in talking, that they would buy or would buy the land by scrip.

"Q. At what point was this?

"A. I don't know where it was.

"Q. I mean what point of time did you hear this; was it before you located yours or after? [683]

"A. It was after."

I do not know D. G. Curtis, J. G. Curtis, T. D. Collins or E. S. Collins and if I ever saw them I did not know who they were. I think that the way that came up I heard about the scrip and I didn't understand about it and at one time I asked him what is scrip anyway, and he tried to explain but I don't remember what the explanation was, and I think he said 'we buy scrip too.'

Redirect Examination.

I know Eastman fairly well, I think his name was Vest.

"Q. Sylvester Eastman, is it not?

"A. I don't know, I knew him by the name of Vest."

I do not know Hensley's first name; I always called him Mr. Hensley.

"Q. Now, did you go to them to inquire about the land, or did they come to you?

"A. Well, it seems to me that I had heard about it through some party some way, and I think that I asked them, if they had, and as near as I remember they told me that they had taken up land. I

(Testimony of John W. Aid.)

am pretty certain that they told me that they had taken up land but I do not believe they told me anything about what arrangements they had made to get money, about how they had arranged to do it. They told me that it was said that I could do it and afterwards I found it out by inquiry.

"Q. If it should develop here in the testimony that Mr. Hensley and Mr. Eastman did not make their entries until after you had made your entry, what would you say about this conversation that they had said they had taken up timber land? [684]

"A. Well, I would simply say that I must have misunderstood them, because that is where I first started with my information. It may be that they were only making inquiry and finding out, and possibly they were doing the favor, they thought, to put me next too, as I was doing for others.

"Q. What did they really put you next to—what favor did they bestow upon you?

"A. They were simply doing me the favor, that I might be able to take up land.

"Q. Didn't you know you could take up land?

"A. Not without money, not in that way.

I had known for a good many years that a man who had a right to a timber claim could not use it if he had no money of his own and would have to borrow money if he ever made use of that right. I do not remember just what information Eastman and Hensley gave me, only they gave me a starter that I might be able to acquire the money and take

(Testimony of John W. Aid.)

up the claim. They might not have even had a claim at that time, but they wanted a claim, intended to have one evidently from the way they talked, thought there was a chance I could borrow money and maybe they had the same idea with themselves.

"Q. Now you said that you gave a note to Tuman for the money that you borrowed to pay for the land? A. Yes.

I do not remember when I gave him the note or where but it must have been about Prattville. I don't remember how much the note was for or how long it was to run. It was ten years ago; I have released two or three notes since then; and I don't remember just how much it was. I don't remember the amount of money he loaned me. [685]

"Q. Do you believe it was $1,000?

"A. Well, it might have been.

"Q. Do you think it was for two thousand?

"A. No, I don't think it was that much. But I don't remember now the exact amount of the note.

I would not say it was for $500 or for $1,000, I don't remember just what the amount was. The land would cost us $2.50 an acre and all the incidental expenses that would be necessary to proving up on the land was added, that would make up the amount that was necessary to be borrowed.

"Q. When you sold your land he paid you $100 for your land in coin, did he? A. Yes.

"Q. Was anything said about how much expense you had incurred at that time?

(Testimony of John W. Aid.)

"A. I don't remember just what the expense was.

"Q. I say, was there anything said about the expense that you incurred in taking up the land?

"A. I don't know that we discussed that at that time.

"Q. Did you ever discuss the amount of money that you were out for taking up this land, with Mr. Tuman?

"A. I don't remember if we ever did.

"Q. As a matter of fact, isn't this the way you did, that Mr. Tuman advanced the money, and you took these people out and when you came to sell the land, you were not out any money out of your own pocket, and he gave you $100 in coin for your land? [686]

"A. Nothing was out of my pocket; it was loaned to me, and advanced as I needed the money.

"Q. That is, you were out no money out of your own pocket, were you, during the whole proceedings?

"A. No, because I borrowed it all, I was supposed to borrow money to cover it all.

"Q. But every time you went to do something, why you were doing it with money that Mr. Tuman had loaned to you?

"A. Yes, that is the way I did it.

"Q. How many promissory notes did you execute to Mr. Tuman?

"A. One note, I presume. That is all I have any recollection of.

"Q. But you were borrowing various sums of

(Testimony of John W. Aid.)

money at different times, were you not, to pay your expenses on different trips?

"A. Well, it was advanced to us at various times.

"Q. And the money was also advanced to you which you turned over to other locators or entrymen at various times was it not?

"A. Certainly it was.

I do not know Joe Ogle nor Mamie Ogle but I know John Van Ornum. I do not know whether or not I went with John Van Ornum to look at the land. I do not think I went with Eastman and Hensley when they went to look at their land, nor do I know where the land was that they located. If it should appear here in evidence that I was named in the publication notice as one of the proof witnesses [687] for Eastman and Hensley and Van Ornum, it is possible that I might have been over there at the time but I have no recollection of it. I do not remember who I was a proof witness for; I was over there several times while there was others there looking at land and I cannot call to mind just how that was. I do not know how many trips I did make over there. I took two trips at least for each crowd that went over there, provided I took them. I took one trip when I went to look at the land that I entered and then I took a trip when the Taylors went over and looked at the land and I made another trip some time, either before or after that. I don't know just when it was, but there was Mr. Isener, I believe his name was.

"Q. Isenberg? A. Yes.

(Testimony of John W. Aid.)

Q. Anybody else in the party?

"A. I don't remember. I had forgotten about that trip altogether until I was reminded of it.

The MASTER.—"Q. Who reminded you of it?

"A. There was a deer killed on that trip.

"Q. He wants to know who reminded you of the trip.

"A. Well, Remick reminded me that I was there with Mr. Isenberg, and I had forgotten about it.

"Q. When did Mr. Remick remind you about the Isenberg trip?

"A. I think it was yesterday some time. I know there was a deer killed on that trip, and I remember something about it now.

"Q. Was Mr. Remick on that trip? [688]

"A. He went every trip, he was the locator. I know that Mr. Isenberg went over there to look at land and I hauled him over but I do not remember what I received for the trip nor do I remember who made the arrangements for me to take him over. He was an old man, he had no way of going, he had no rig of his own.

"Q. Did he pay you $4.00 a day for taking him over there?

"A. Not personally. What arrangements he had made, I don't know anything about that.

"Q. Who paid you the money for taking him over there?

"A. That I don't remember. No doubt it was paid just the same as the rest was out of the money he borrowed, but I don't remember.

(Testimony of John W. Aid.)

"Q. Do you know that Mr. Isenberg borrowed the money? A. No, I don't know it.

"Q. But you know that you were paid and you got the money from Tuman; is that correct?

"A. Oh, I don't remember that.

I remember being over there and Remick was along too, he was locator. I do not remember that there was anybody else on the trip besides the three of us. After I took Isenberg over there to look at the land I must have taken him right onto the land and right home again, but I do not remember that but I do not remember that Mr. Isenberg told me what arrangements he had made about getting money. [689]

"Q. Now, just let me get clear in my mind, Mr. Aid, this incident in which you went to Mr. Tuman the first time. Now, if I am wrong in stating your testimony, you correct me on anything that I am wrong on. You went to Mr. Tuman and talked with him about borrowing money to take up the land, stating that you and your brothers and your father would like to do it; that then—

"A. (Intg.) No, I did not state what they would do, because I had not seen them yet and told them.

"Q. Stating they would probably like to do it?

"A. Yes. Then the next day I started down to Chico and brought back up with me.

"Q. And you made your arrangements then with Mr. Tuman to borrow money then, or did you rely on Mr. Tuman's agreement that you had with him be-

(Testimony of John W. Aid.)

fore the statement that you had before you went to Chico?

"A. I think I relied on what we had understood before. Then we went and looked at the land and then went over to the Land Office. That is the trip that I charged the $20 for because we had not arranged till we could meet Mr. Tuman and see whether we could get it from Mr. Tuman for the whole crowd, or not; I could not say for them until they talked to and had met him and we had agreed on those things, there would be no way that I could get the money, consequently I went on my own accord and brought them up there and afterwards charged them $20.

I cannot recall now just how I came to take Mr. Isenberg out to look at the land. He was living at Chico at the time and it must have been that I charged the $4.00 a day because I did not intend to work for less than that, [690] that was my regular price, after I had charged the $20 for my father and brother and myself, my set price was $4.00 a day. Either Mr. Isenberg paid me or else Mr. Tuman or someone that loaned him the money. I don't remember just how that was, but I know I did not go over there for nothing, but whether Mr. Isenberg paid me or someone else paid me I disrecollect altogether. I do not remember that I took Eastman and Hensley out to look at their land. It is my impression that they had already seen their land and filed on it.

"Q. Now, you stated that Mr. Remick told you yesterday afternoon about the Isenberg trip, and

(Testimony of John W. Aid.)

that you did not remember it until you had talked with him. Did he tell you about any of the other things that you did during this time? A. No.

"Q. He did not tell you about anything else on that trip?

"A. I said I did not remember taking Mr. Isenberg over, it slipped my memory if I took him over. He said 'Don't you remember I killed a deer on that trip' and I know there was a deer killed on the trip and I remembered the circumstances.'

I do not remember that we talked about anything else except the Isenberg trip. I never discussed with Remick howButler and Taylor went over nor the circumstances of the trip on which my brothers were taken over. [691]

Recross-examination.

Mr. SHURTLEFF.—"Q. Are you sure that you took Mr. Isenberg to that Land Office?

"A. I am not sure I took him to the Land Office."

I might have taken him to Prattville instead of taking him to the Land Office. I say that trip almost slipped my memory. In fact, I even said I was not on that trip, but when this circumstance was brought to my mind I remembered that I was there. [692]

Testimony of Jacob S. Aid, for Complainant.

JACOB S. AID, called as a witness for complainant, testified as follows:

My name is Jacob S. Aid; I am 73 years of age; my postoffice address is Chico, California, and occupation is common laborer. During the year

(Testimony of Jacob S. Aid.)

1901-02-03 my home was in Chico, but I was not there all the time. I was over in Oregon one winter and the next summer I was down in San Joaquin. I remember taking up some timber land in Plumas County and at the time I took up this timber land I was living in Chico. I remember going to Susanville to file my application to take up this timber land and if the date of the application is September 5, 1902, that was the date the application was filed. I went with a party consisting of my three sons and a man by the name of Rhodes to look at the land before I made my filing. The land that I looked at lies between Taylorville and Quincy and after I looked at the land I went right through from Taylorville to Susanville. It is about 100 miles as near as I can figure it from my home in Chico to Taylorville.

"Q. Now, when you got to Taylorville did you know where the land was that you were going to locate on?

"A. No. Mr. Remick took us over the ground, we did not know where it was.

"Q. Where did you meet Mr. Remick? [693]

"A. At Taylorville.

"Q. That was Mr. Ned Remick, was it?

"A. Yes.

"Q. Had you ever met Mr. Remick before that time? A. No.

"Q. And these various people that you have mentioned as being in the party also went out at the same time and looked at their land? A. Yes.

After looking at the land we went from Taylor-

(Testimony of Jacob S. Aid.)

ville right through to Susanville and made our filings.

"Q. Now, this trip from Chico to Taylorville, and then looking at the land and then going to Susanville, who paid your expenses on that trip, do you remember? A. My son paid all the expenses.

"Q. Your son John W. Aid? A. Yes.

"Q. Did you have a livery rig, or did you use your own rig? A. We had our own rig.

"Q. But you had your hotel bills to pay?

"A. They paid all the expenses, hotel bills and everything else.

The MASTER.—"Q. Who do you mean by 'they,' your son John? A. Yes.

Mr. PIER.—"Q. Now at the time you filed upon the land, you knew that you would have to pay $400 to the Government for the land, did you not?

"A. I did. [694]

"Q. And you subsequently paid $400 to the Government, did you not? A. How is that?

"Q. I say subsequently you did pay $400 to the Government at the Land Office for the land, did you not? A. Yes.

"Q. Where did you get the $400 with which to pay for the land?

"A. Well, the company or whoever it was, I had never seen any of them but Mr. Remick, they furnished the money at the hotel at Susanville, through Mr. Elam, they paid him some money at the hotel.

"Q. (SHURTLEFF.) Mr. Arthur Elam?

"A. Yes, that is right.

(Testimony of Jacob S. Aid.)

Mr. PIER.—"Q. A fairly well-built man with ruddy hair? A. Yes.

"Q. When you made your application for the land, that is when you went to Susanville to file on the land the first time that was on the trip when you went out and looked at the land? A. Yes.

"Q. At the time you did that what did you expect to do with the land if you got it?

"A. Well, I expected to sell it after I got it, because that was what I took it up for, to get what I could for my own use and benefit.

"Q. Did you know how much you were going to get out of the land? [695]

"A. Yes, I expected we were to get $100 and everything paid, expenses and everything, so that we would not be out anything at all.

"Q. Who told you that you were to get this $100 for taking up the land?

"A. I think it was my son John W. Aid, and also Ed Remick, I believe his name was.

"Q. Did he tell you that at the time you were at Taylorville the first time? A. Yes.

"Q. Did they tell you who you were to transfer the land to?

"A. I don't remember whether they did or not, I don't think so.

"Q. Do you remember where this Mr. Elam gave you the $400 to pay for the land?

"A. Yes, it was in the Hotel Emerson.

"Q. The Emerson Hotel?

"A. Yes, at Susanville.

(Testimony of Jacob S. Aid.)

"Q. Did he give it to you in the lobby of the hotel?

"A. He gave it to us in a room.

"Q. In his room? A. In his own room.

"Q. Was anybody else in the room besides Mr. Elam when he handed you the money?

"A. I don't think so. I would not be positive but I do not think there was. [696]

"Q. Now, when you made your final proof on the land, that is the time when you paid the $400 and you gave your testimony so as to finally get the land, that was the second time you went to Susanville?

"A. Yes."

I do not remember how long it was after I made proof that we disposed of the land. It has been quite a while ago and I did not charge my mind with it, and I could not say.

The MASTER.—"Q. Did you sign a deed to the land while you were there in Susanville on that trip?

"A. No.

"Q. Where did you sign the deed?

"A. In Chico.

The MASTER.—"Have you the date of the deed there Mr. Pier?

Mr. SHURTLEFF.—"We have the date, December 9, 1902.

Mr. PIER.—"The record of the Land Office shows that final proof was made on the 21st of November, 1902.

Mr. SHURTLEFF.—"He deeded according to your allegation December 5, 1902.

"Q. Do you remember where you executed the deed to the land?

(Testimony of Jacob S. Aid.)

"A. Why, it was in Chico.

"Q. You executed it in Chico. Do you remember the place in Chico where you executed the deed?

"A. It was turned over in the Park Hotel.

"Q. What did you receive for your land at the time you executed the deed? A. $100. [697]

"Q. Who gave you this $100?

"A. I don't know that I can give his name, I think his name was Shulen or Shuman.

"Q. Tuman? A. Tuman, that is it.

"Q. That is, he was a pretty good size man with dark mustache?

"A. Yes, I don't think that I had ever met Mr. Shuman before, nor haven't since.

"Q. Do you remember whether you received anything besides your $100 for the land?

"A. Not outside of our travelling expenses.

"Q. Did you receive anything for the time that was consumed in your trip to look at the land and also in making your final proof upon the land?

"A. Well, the first time I was talking to Mr. White, he was talking to me about it, I think I told him that we did, but coming to think about it, I do not think we did.

"Q. But you received the travelling expenses?

"A. Well, that was all, just as we went.

"Q. I thought your son paid those?

"A. He did. Wherever we stopped all night or stopped at dinner, he paid the expenses.

"Q. Was that ever paid back?

"A. I don't know whether it was or not.

(Testimony of Jacob S. Aid.)

"Q. You did not yourself expend any money on the trip? A. No.

"Q. You only got $100? [698]

"A. That was all.

Mr. PIER.—"Q. Mr. Aid, did you pay Mr. Remick anything for showing you the land?

"A. No.

"Q. You did not expect to pay him anything for it did you? A. No.

"Q. When Mr. Tuman paid you for the land, do you remember where he paid you the $100?

"A. It was in the Park Hotel at Chico.

"Q. Do you remember what room?

"A. It was in the cloak-room.

"Q. Was anybody else in the cloak-room at the time he handed you the money?

"A. I do not think so.

"Q. How did you happen to go to the cloak-room to receive the $100?

"A. I don't know. I probably did not want anybody to see him give me the money, that is about all I went to the cloak-room for.

"Q. Now when you left Chico, that is when you first talked about taking up this land with your son, did your son tell you how much you would get for taking up the land? A. Yes.

"Q. How much did he tell you would get for taking up the land?

"A. I would get $100, and all expenses and everything paid, I would not be out anything. [699]

The MASTER.—"Q. Which son was this that

(Testimony of Jacob S. Aid.)

you speak of? A. John W. Aid.

"Q. Are James and Thomas L. Aid your sons also? A. Yes.

Mr. PIER.—"Q. Mr. Aid, do you know whether James T. or Thomas L., your other sons, took up any land?

"A. Yes, they took up land at the same time as we did.

"Q. Where is James T. Aid now?

"A. He is in his grave.

"Q. Thomas L. is also dead, is he at the present time? A. Yes.

"Q. Now, do you know the circumstances under which they took up the land?

"A. Well, just the same as I.

Mr. SHURTLEFF.—"He can answer that by yes or no. Do you know the circumstances under which they took it up. Say yes or no.

"A. Why not, yes.

Mr. PIER.—"Q. Will you state the circumstances under which your sons James T. and Thomas L. Aid took up the land?

"A. Well, they were to take up the land and receive a $100 for their right to take up the land.

"Q. Were they to have all their expenses paid also?

"A. They were to have all their expenses paid, yes. [700]

"Q. Do you know whether they did have all their expenses paid?

"A. Yes, they had them all paid.

(Testimony of Jacob S. Aid.)

"Q. Do you know whether they received their $100? A. They received their $100.

"Q. From the same man?

"A. From the same man.

"Q. Were they present at Taylorville at the time that Ned Remick—did you hear Ned Remick talk to them in the same way that he talked to you?

"A. Yes.

"Q. Do you remember what he told them?

"A. No, I don't know as I do."

When we were in Taylorville we were altogether and our conversation with Mr. Remick was with Mr. Remick on one side and our group of people on the other and he talked to us all at one time, altogether.

"Q. You said a minute ago you did not know what he said to the others?

"A. I did not understand the question probably.

"Q. Then you did hear what he said to your two sons?

"A. Well, he said that he could go out and look over the timber, over the ground, look at our claims, go over the ground.

"Q. You remember hearing him say that to them? You see, Mr. Aid, what we want is not what you may think are the facts in any case? A. Oh, no.

"Q. But what you actually saw and heard, that is [701] evidence, but anything else is not.

"A. Yes."

I do not know that I ever talked over the taking up of this land with my sons James T. and Thomas

(Testimony of Jacob S. Aid.)

L. Aid. Of course we spoke of it and concluded to go, but that is about it, the sum and substance of the thing.

"Q. At the time you were taking up the land, to whom did you consider that you were going to transfer the land?

"A. How is that? I am kind of hard of hearing, and I don't understand sometimes.

(Former question repeated.)

"A. Well, to some company I supposed. I didn't know who it was. I did not ask any questions, as far as that was concerned. I supposed it was rather, if anything, to this man Shuman.

The MASTER.—"A. Did you know anything about him at the time you started to Taylorville?

"A. No, only that my son had spoken to me, and I supposed that Shuman was the man that wanted the land, that wanted to take it.

The MASTER.—"Q. Did you know anything about him at the time you started to Taylorville?

"A. No, only what my son had spoken to me, and I supposed that Shuman was the man that wanted the land, that wanted to take it.

"Q. You did not know anything about it?

"A. No.

"Q. You had not promised to convey the land to Mr. Shuman, as you call him? [702]

"A. No.

Mr. PIER.—"Q. You understood that the land was to go to the parties that furnished the money, did you? A. Yes.

(Testimony of Jacob S. Aid.)

"Q. Did you understand me on that point: Is that clear to you—that is, you were to transfer the land to the people that furnished the money?

"A. Yes.

"Q. And you expected to do that at the time you took up the land, did you not?

"A. Yes. That is the reason why I supposed that Mr. Tuman was the man, because he was furnishing the money; it came through Tuman.

Cross-examination.

Mr. SHURTLEFF.—"Q. Who first spoke to you, Mr. Aid, about this timber land?

"A. My son, John W. Aid.

"Q. Where did that conversation take place?

"A. Chico.

"Q. What did he say to you?

"A. Well, he said that we could take up the land and we would not be out any money of our own at all and could get $100 out of it if we wanted to do it. I wanted to know if he thought there was anything crooked about it, and he said he did not think there was. Of course if I had thought there was anything crooked about it, I would not have had anything to do with it.

"Q. At that time did you know Ned Remick?

"A. No. [703]

We went from Chico to Taylorville and there we met Mr. Remick.

"Q. How came you to go to Mr. Remick?

"A. Well, he was, he seemed to be the locator.

(Testimony of Jacob S. Aid.)

"Q. Who told you he was the locator?

"A. Well, John W. Aid.

"Q. Now, you remember as a distinct fact that your son had told you that Mr. Remick would locate you?

"A. Yes, would show us the land.

"Q. And you saw Mr. Remick on this occasion. Do you remember the day of the week?

"A. No, I don't.

"Q. What was your business at that time?

"A. Well, it was common laborer.

"Q. You went to see Mr. Remick—and your three sons—who else, Mr. Butler?

"A. No, it was Mr. Rhodes.

"Q. What did Mr. Remick say, Mr. Aid, at this conversation, what passed between you and Mr. Remick?

"A. I don't remember if there was anything further than he would take us and show us over the land, as far as I remember now."

He went out with us on to the timber but I do not think there was anything said about selling while we were out on the land.

"Q. Who introduced you to Mr. Tuman, at Chico, at the time you speak of?

"A. John W. Aid.

"Q. Was he at the hotel with you?

"A. Yes. [704]

"Q. Did all your sons get the money at the same time? A. Yes, all three of my sons.

"Q. In the cloak-room? A. Yes.

(Testimony of Jacob S. Aid.)

"Q. Altogether.

"A. No, I am not positive whether we all went into the cloak-room at the same time or not, it has been so long ago, and my memory is not so good now, and of course I did not pay much attention to it.

"Q. Are you sure it was in the cloak-room?

"A. Yes, but I hardly think—let me see—I guess we were all three of us, my three sons and myself.

"Q. Is that a guess or do you know?

"A. I don't remember distinctly, but I am positive that he paid me my money in the cloak-room.

"Q. Did you see the two sons that are deceased get their money, did you see Mr. Tuman pay it to them?

"A. I could not say that positively or not. If they were in the cloak-room when I was, I did, and if they were not, I did not.

"Q. How do you know they got their money?

"A. Well, all I know about it is what they said, and I knew they had the money.

"Q. You saw them have the $100? A. Yes.

"Q. You saw the $100, did you? A. Yes.

"Q. Where did you see it?

"A. Well, after we went home, we counted it [705] after we went home.

"Q. It was all paid in coin, was it?

"A. All paid in 20-dollar pieces."

Prior to the time of meeting Mr. Remick and going on to the land I had not had any agreement with anyone about selling the land to them any more than that was the understanding.

(Testimony of Jacob S. Aid.)

"Q. What was the understanding?

"A. That we would take up the land, and that we would have $100 for our rights.

"Q. Did you agree at that time, make any promise to give them your right for $100?

"A. The time I went to look at the land?

"Q. Yes.

"A. No, I had no agreement with Mr. Remick at all. The only agreement that I had was through John W. Aid, my son, and that was his instructions, that we would get $100 for our right to take up the land.

"Q. He told you, in other words, if you would go and take up the land that you could make $100 and your expenses? A. Yes.

"Q. And that was all there was to it so far as any arrangement that you had touching the transfer of your land was concerned, and up to that time you had not seen Mr. Tuman?

"A. I had not seen Mr. Tuman. I don't remember that I had ever seen him at all up to the time that I met [706] him at the Park Hotel when he met us and paid us the money—I am pretty certain I never met Mr. Tuman until then, that I had not seen Tuman at all before that.

"Q. And you say you got your $400 from Mr. Elam? A. Yes.

"Q. Who introduced you to Mr. Elam?

"A. I think it was John W. Aid, if I am not mistaken.

"Q. In other words, John W. Aid simply di-

(Testimony of Jacob S. Aid.)

rected you as to taking up this land?

"A. Yes.

"Q. And all your talk and all your arrangements were with your son, John W. Aid? A. Yes.

"Q. What made you ask him if there was anything crooked in it?

"A. Well, because I did not thoroughly understand the matter, how it was, and I naturally asked him the question, and I had him explain."

I knew that I had not spent any of my rights with the Government, and that I was entitled to take up timber land.

"Q. You thought there was something wrong apparently?

"A. Well, I did not know there was anything wrong.

"Q. But you thought so?

"A. Well, I don't remember that I did.

"Q. What made you ask him if there was anything wrong?

"A. Because I wanted to find out.

"Q. What suggested the idea to you that there was [707] something wrong. You had confidence in your son, didn't you?

"A. Why, yes, certainly, but still I might think something and not then be right, and I wanted to find out.

"Q. It was hardly a natural question to ask, was it, when you knew the law gave you the right to take up timber land, didn't you?

"A. Yes—I don't know as I did altogether. I

(Testimony of Jacob S. Aid.)

had not examined the law in the question.

"Q. Let me ask you, do you know of anything crooked in it now?

"A. Well, I cannot see anything on my part, as far as I was concerned, that I done anything wrong, but I suppose it was, the manner in which they tried to get the land in the end."

I cannot now recall what it was in my mind that suggested that I inquire of my son if there was anything crooked in the matter.

"Q. Just state it again.

"A. I guess I just had some questions, and asked him if he thought there was anything crooked in the matter, and he said there was not.

"Q. Now, Mr. Aid, at all the times you had a perfect right to sell this land to whomsoever you pleased, didn't you?

"A. I guess I did; yes.

"Q. And you did not negotiate for the money until after you had made your location, did you?

"A. No, any more than the promise that was all, that we were to have $100 for the right.

"Q. You say promise. Your son told you that you [708] could get that, no one promised that you could get that, did they? A. No.

"Q. Were you present when your son John W. Aid told your two sons that are now deceased that they could take up the land—did you hear him talk with them about it?

"A. I didn't think I did.

"Q. So that whatever you have to say in relation

(Testimony of Jacob S. Aid.)

to what your two sons did, aside from seeing that they get this $100 or seeing them have it, it is hearsay, what somebody else has told you?

Mr. PIER.—"We object to that.

The MASTER.—"It is a proper question.

"A. I don't know as I understand that question.

Mr. SHURTLEFF.—"Q. It is a little involved. As I understand you, you did not hear your son John W. Aid discuss the taking up of this timber land with your two boys that are dead?

"A. I don't think that I did.

"Q. Where was it that you had the conversation with your son, John W. Aid, in which he told you that Tuman was the man probably that would get the land or pay the $100 and expenses?

"A. I could not say where it was.

"Q. Do you remember the conversation?

"A. No, I don't believe I do.

"A. You say that Mr. Tuman paid you the money in the cloak-room? A. Yes. [709]

"Q. Counsel asked you why it was paid you in the cloak-room. What was your answer?

"A. I don't know what his reasons were for paying me in the cloak-room. He took me into the cloak-room and paid me the money there.

"Q. Where did you give him the deed?

"A. He came to my house.

"Q. Was that before or after he had paid you the money?

"A. Well, I gave him the deed in the Park Hotel and he came down to my house and we went up

(Testimony of Jacob S. Aid.)

town, up to the Park Hotel, then he paid the money, and I handed him the deed.

"Q. You handed him the deed in the cloak-room, did you?

"A. Yes, I think, as near as I can remember, I handed him the deed in the cloak-room.

"Q. Were there others at that time in the sitting room? A. Oh, yes.

"Q. Where did he pay your three sons their money—you stated in the cloak-room too?

"A. Yes."

I am not certain, I would not be positive. This has been a long time ago and my memory is not as good and of course I did not pay so much attention to it. I do not know as I thought it funny he would pay me that money in the cloak-room. I really thought he could just as well have paid it out in the sitting-room as in the cloak-room. [710]

"Q. But there was nothing in that act of taking you in the cloak-room that would suggest to you there was something crooked in your entry?

"A. No, there was nothing that suggested that to me."

Redirect Examination by Mr. PIER.

At the time these entries were made my occupation and that of my son, James T. Aid, was common laborer, while my son Thomas L. Aid was a plumber. I did not have any money that I could invest in timber land at that time. Neither did my sons, Thomas L. nor James T. have funds with which to buy timber lands and I do not think my

(Testimony of Jacob S. Aid.)

other son, John W. Aid, had any money with which to make investments in timber land at that time. I could not have taken up the land if I had not known when I started out that the money to pay my expenses would be advanced and that I could dispose of the land when I got title.

"Q. You could not have taken it up?

"A. No.

Recross-examination.

Mr. SHURTLEFF.—"Q. You did not know it at that time, as a matter of fact, Mr. Aid?

"A. Well, I don't know as I did.

Mr. PIER.—"Q. Didn't know what?

Mr. SHURTLEFF.—"Q. You did not know at that time that you could get the $100 and your expenses paid, did you?

"A. Well, of course, no more than I heard.

"Q. You had heard it? A. Yes.

"Q. That was all there was to that, that you had simply heard that from your son?

"A. Yes. [711]

"Q. No man had agreed to do it with you, had he? A. No.

I remember that I went to Susanville at the time I made my final proof and gave final proof testimony.

"Q. I want to ask you if you remember giving the following answers to questions.

"Q. 16. 'Did you pay out of your individual funds all the expenses in connection with making the filing and do you expect to pay for the land with

(Testimony of Jacob S. Aid.)

your own money'; and you said: 'I did and I do.' Do you remember that answer?

"A. Well, the money was paid over to me, I say, and was in my hands, and whose money was it? Isn't it mine, then?

"Q. All I want to know is whether or not you answered that, and whether you gave that answer?

"A. I could not say for certain whether I did or not.

"Q. What is your best recollection about it?

"A. For the life of me I couldn't tell you.

"Q. Do you think you did not answer it that way?

Mr. PIER.—"He has answered his best recollection.

Mr. SHURTLEFF.—"I have the right to press him.

The MASTER.—"That is proper cross-examination.

"A. As I said before, I could not say for the life of me, because it has been so long ago, and I paid so little attention to it, I could not be positive about at at all.

"Q. Let me ask you the question again—now here is the question: 'Did you pay out of your individual funds all the expenses in connection with making the filing, and do you expect to pay for the land with your own money'—now that was the question. Was your memory fresher then *that* it is now? [712] A. Well, I don't know as it was.

"Q. About where you would get the money?

(Testimony of Jacob S. Aid.)

"A. No.

"Q. To which you answered, 'I did,' that is I paid the money out of my individual funds—and this question: "Do you expect to pay for the land with your own money,' and you said, 'I do.' Had you negotiated a loan from anybody prior to that time? A. No.

"Q. Had Mr. Elam given you the $400 at that time? A. Before that he had.

"Q. Did you expect to pay it back to him?

"A. No.

"Q. So as a matter of fact you did not borrow it from him? A. No.

I considered it my individual money, the way I looked at it, because all expenses and everything were to be paid for filing and entering the land.

"Q. Didn't you know at the time, Mr. Aid, that there was a little something off-color about that?

"A. I could not say.

"Q. Did you in Question 17: 'Where did you get the money with which to pay for this land, and how long have you had the same in your actual possession' answer: "I borrowed $420 of Art Elam of Prattville, California, since yesterday.'

"A. That is the way I put it, I told them Elam gave me the money and— [713]

"Q. (Intg.) You said you borrowed it?

"A. Yes.

The MASTER.—The United States Attorney wants you to finish the answer. You said that. 'I told them that Elam gave me the money and—'

(Testimony of Jacob S. Aid.)

he wants you to finish that. Does anything else occur to you? He wants you to finish your answer, if you have anything further to say about it?

"A. About getting the money from Elam?

"Q. Yes. A. I don't think I have."

I don't know as there was anyone suggested to me how I should answer these questions about where I got the money, to say that it was my own individual money and I had borrowed it from Mr. Elam. I am not sure that they did not, but I do not think they did. It might have occurred.

"Q. Had Mr. Elam suggested to you that you say that? A. No, I don't think so.

Redirect Examination.

Mr. PIER.—"Q. Did you expect to pay this $420 back to Mr. Elam? A. No.

"Q. Had Mr. Elam told you it was a loan to you at all?

"A. I could not say positively whether it was or not."

I considered that I was under no obligation nor did I feel that I was under any obligation to deed the land [714] to Mr. Tuman.

"Q. You thought you could have given the deed to anybody else just as well?

"A. Well, yes,—no, I could not very well, under the circumstances, you know, because Mr. Tuman was the proper one to give the deed to—I could not have conscientiously made the deed to anyone else.

"Q. Could you have conscientiously kept the land? A. Well, no.

(Testimony of Jacob S. Aid.)

Recross-examination.

Mr. SHURTLEFF.—"Q. Why couldn't you have conscientiously deeded to somebody else?

"A. Well, from the understanding that Tuman was furnishing all the money, and paying all the expenses that were paid, I would have been going back on myself.

"Q. That was what occurred? You got this feeling or this idea after you had been given the money? A. Yes.

"Q. You got this idea after you had gone on the land and located it, or before?

"A. After I had went on to the land.

Further Redirect Examination.

Mr. PIER.—"Q. When you made your first trip over there, you were paid all your expenses by your son, were you not? A. Yes.

"Q. Do you know whether or not your son furnished these money himself, out of his own funds? [715] A. No, I do not."

I considered that I was under no obligations on account of my expenses being paid on the first trip, to transfer the land to anybody.

"Q. How did you feel conscientiously about it, could you have kept the land—would you have been able to keep the land yourself the way you felt after your trip? A. Well, no."

When I started out on that first trip knowing that my expenses were going to be paid and all the expenses of taking up the land were going to be paid, I could not have conscientiously kept the land

(Testimony of Jacob S. Aid.)

after I got through. I do not think I could. At the time that I started out on the first trip it was first in my mind to dispose of the land, but I did not know to whom.

"Q. You did not know the person, but you had an idea that there was some person that was going to get the land, didn't you? A. Yes.

"Q. And when you started out you fully expected to convey it to that person, did you not?

"A. Yes.

Recross-examination.

Mr. SHURTLEFF.—"Q. You went up to look over this land and you made your first application, your affidavit, your original entry, on the 21st of November, 1902,—now that was the date, November 21, 1902. Suppose on the 5th day of November following your son had come to you with a deed and said, Father, I want you to deed that entry that [716] you have taken up to me, would you have signed it? A. No.

"Q. Why not?

"A. Because I would not have been doing right.

"Q. Why not?

"A. Because he had not furnished the money to go ahead, and they had.

"Q. Is that the only reason?

"A. Because I would not consider it honest to myself to be done—I would not consider it to be an honorable act on my part.

"Q. Why not?

(Testimony of Jacob S. Aid.)

"A. Because that was not the understanding, in the first place.

"Q. Who was your understanding with?

"A. Well, there was none as far as I am concerned.

"Q. It was with your son? A. Yes.

"Q. You did not tell your son that you would deed to anybody in particular, did you?

"A. No, sir.

"Q. He had not told you that you must deed to someone that he might name, had he?

"A. Not that I remember."

If my son had come to me on the 5th of December and said, "Here is a deed for that land, I want you to deed it to me," I would not have done it, because it would have been wrong. [717]

"Q. Why?

"A. Because I found out afterwards that either Mr. Remick or Mr. Tuman was furnishing the money.

"Q. Before you found that out, did you not find out that until after you had made your application did you? A. No.

"Q. Before you found that out, if your son had come to you and said, Now, here is a deed of this property, and I want you to sign it and deed it to me?

"A. I would have before I learned that, I probably might.

Mr. PIER.—"Q. You knew that your son was not putting up the money, didn't you—you knew

(Testimony of Jacob S. Aid.)

that your son personally was not?

"A. My son was not.

"Q. That is, you knew that your son John W. Aid was not going to put up the money personally to take up the land? A. Yes.

"Q. You knew he could not do that for all you people, didn't you?

"A. Yes, of course, he couldn't.

Recalled.

"Q. There were a number of expenses incurred during the trip, that is, filing fees and things of that kind? A. Yes.

"Q. Did you understand that you were under any obligation to pay that money back to anybody?

"A. No. [718]

Testimony of Elijah Taylor, for Complainant.

ELIJAH TAYLOR, called as a witness for complainant, testified as follows:

My name is Elijah Taylor; I am 47 years of age and my residence, at the present time, is Alturas, Modoc County, California. In 1902–03–04 I lived in Chico, California; my occupation at the present time is laborer. During 1902 and thereabouts I was sporting a little, doing a little gambling. I remember that I made an entry of timber land in Plumas County in about 1902.

"Q. The sworn statement which you made shows that that statement was made on the 15th of September, 1902. A. That is right, then.

I remember making an application at the Susanville Land Office. Before I made application at the

(Testimony of Elijah Taylor.)

Susanville Land Office I went to look at the land with John L. Gray, R. C. Taylor, Charles Moore and a fellow by the name of Butler. We went with John W. Aid, with the exception of Butler, who drove his own rig and we were shown the land we afterwards entered by Mr. Remick whom we met in Taylorville on our way out to the land. We all of us went out together and after we looked over the land we returned to Taylorville and then went to Susanville. My attention was first directed toward making a timber land entry by a Mr. Taylor who runs a feedyard in Susanville and Mr. Ned Isenberg whom I met in Prattville. Mr. Gray and my brother were anxious to go on to Chico and we talked the matter over while going down and then I saw John W. Aid one day and he asked me if I had ever used my [719] right to take up timber land, and I told him I had not and he said, 'If you have never used your right, there is a chance for you to take up a piece of timber land and make a piece of money.' He did not make any offer, or anything of that kind. I asked him how much I would realize on the money invested, and he said that he could not say exactly, 'you can probably make $100 and all expenses clear and if you conclude to do it yourself, and there are other friends of yours who want to be located, speak to them,' and I spoke to John L. Gray, and also my brother, and we finally decided we would locate the land.

"Q. Did you communicate that to John W. Aid?

"A. I communicated that to John W. Aid."

(Testimony of Elijah Taylor.)

When I talked over this matter with Aid I discussed with him how long I would have to have my money tied up in the land, and he told me that I could make $100 clear of all expenses on a $400 investment in ten weeks, and I thought that was a pretty good investment. I do not remember the exact statement that he made, but he said he was pretty confident that there would be that much in it at least. I think he said it would take ten weeks after locating before I could prove up, but I do not recollect that he said anything about how long it would be from the time I proved up until I would be paid for the land. I do not recall that he told me how soon I could dispose of the land after I made my proof. He said something about I would not have to hold it long or I would not have to have the money tied up long before I could dispose of it. I had never met Mr. Remick until I met him in [720] Taylorville before we went out to look at the land and I do not remember that there was any conversation about our paying him anything to locate us upon the land.

The MASTER.—"Q. Did you have any conversation with Mr. Remick at all?

"A. Nothing only he would take us out and show us the land."

I do not think that I talked with Mr. Remick about that. Mr. Butler, Jim Butler, was the man that spoke to him. I do not think Remick talked to me personally. He might have said something to the crowd in the hotel in the morning when we

(Testimony of Elijah Taylor.)

went up to look at the land. I do not know that he was addressing me any more than the rest of them. After I had looked at the land I went to Susanville to make my filing; paid the filing fees out of my own money.

"Q. Did you pay your own hotel bill?

"A. I didn't pay any hotel bill.

"Q. Did you pay any other of your expenses of that trip outside of your filing fees at the Land Office? A. Not on this trip.

"Q. Were you ever reimbursed for the money that you paid for your filing fees at Susanville the first time you went there?

"A. Not until after I proved up on the land.

"Q. Did you receive any expense money before you proved up on the land for any of your expenses? A. Yes.

At Prattville, after filing on the land, Mr. Aid gave me some money for expenses, but it did not quite cover all of [721] my expenses. When I went to Susanville to make proof I went from Chico to Sacramento then to Reno, and then out on the N. O. C. road to the Hot Springs and by stage to Susanville. I paid for the land with my own money which I made, made some of it by working in the hay-fields, but the greater part of it I made gambling. Nothing was ever said to me about any money to pay for the land. I told Mr. Aid that I had the money to pay for it and I would pay for it with my own money.